16320

SUPREME COURT U.S.
FILED
OCT 12 1892
JAMES H. MCKENNEY, CLERK

SUPREME COURT OF THE UNITED STATES.

No. 326.

SILAS SEYMOUR, SILAS M. SEYMOUR AND LESTER L. ROBINSON, SURVIVING PARTNERS OF S. SEYMOUR & COMPANY, PLAINTIFFS IN ERROR,

vs.

THE WESTERN RAILROAD COMPANY.

BRIEF FOR APPELLANTS IN REPLY.

JOHN W. HINSDALE, *Counsel for Appellants.*

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1881.

SILAS SEYMOUR, SILAS M. SEYMOUR and LESTER L. ROBINSON, surviving partners of the firm of S. SEYMOUR AND COMPANY, Plaintiffs in error,
Against
THE WESTERN RAIL ROAD COMPANY, Defendant.

No. 326.

BRIEF OF JOHN W. HINSDALE, *Counsel for Appellants.*

IN REPLY.

FIRST. The general proposition, that "covenant lies for a breach of contract under seal, and to a contract there must be parties *in esse* who must assent," maintained by the defendant's counsel, is in harmony with the position held by the appellants.

The case of *Marsh* v. *Brooks*, 11 Ired., N. C. Rep., 409, cited by the defendant upon another point, may be here considered. It was an action of debt on a single bond payable to E. M. or bearer. *Non est factum* was pleaded. There was no evidence that the bond had ever been delivered to E. M., or that he had transferred it to the plaintiff, who thus claimed as the original obligee. The Court held, that a

bond payable to bearer is too indefinite. Had there been a delivery and assignment, the plaintiff would have recovered by virtue of the statute making bonds negotiable. In the case at bar, there was a delivery, and there is no uncertainty as to the parties. This we have argued in the plaintiffs' first brief.

The case of *Newsom* v. *Thompson*, 2 Ired, N. C. Rep., 277, cited by the defendant, decides that a deed to A. B. and her children, yet to be born, does not vest anything in the unborn children. The only point settled by this case is the familiar one, that persons not *in esse* cannot take an estate *in presenti*. The case at bar was not one of the devolution of property, and there were persons *in esse* who contracted.

The case of *Sanderson* v. *Griffith*, 5 B. & C., 909, is cited under this head by the defendant. In this action by Sanderson, his wife and White, the declaration stated, that the plaintiffs had agreed to let the defendant certain lands; that the defendant became tenant of the plaintiffs, and in consideration that the plaintiffs had promised the defendant to perform all things in the agreement by them to be performed, the defendant promised, &c. The agreement given in evidence purported to be made by an agent for the wife of Sanderson and White only; but Sanderson had subsequently received rent from the tenant.

It was held, that the consideration was not proved as alleged, inasmuch as Sanderson was not bound by the agreement before the receipt of rent, and therefore was not a joint contractor *ab initio*.

This case is distinguished from the case at bar, in that:

1st. The plaintiffs offered to prove not only a subsequent ratification, but a previous authority in S. Seymour to make the contract for them, and this case goes off upon the point, that there was no previous authority conferred by the husband.

2nd. The contract, upon its face and by the mode of execution adopted by the plaintiffs, shows that S. Seymour

professed to act for himself and others, and that the defendant throughout the instrument contracted with a partnership.

3rd. While it was not contemplated in the execution of the agreement that the husband should be made a party; in the contract declared on in the case at bar, it was in effect stipulated, that S. Seymour might nominate and make parties to the contract, his associates, and when he did so, they either became parties *ab initio* by relation back, or else, the contract being *in fieri* until they were brought in, it then became fully executed and complete and then took effect.

4th. Whether the other partners were brought in by S. Seymour under this authority; or having previously authorized S. Seymour to make the contract for them, they were in fact parties to it when it was made, being undiscovered principals; or Seymour professing to make a contract for them, they subsequently ratified it; they were afterwards dealt with as contracting parties by the defendant, and performed work under the contract for the defendant, for which they now seek to enforce compensation.

The case of *Metcalf* v. *Bruin*, 12 East, 400, also cited, decides that a bond given to trustees to secure the faithful services of a clerk to the Globe Insurance Company, who were no corporation, may be put in suit by the trustees for a breach of faithful service by the clerk, although the company was a fluctuating body. This case has no bearing whatever upon the proposition, which it is intended to support.

The case of *Hoffman* v. *Porter*, 2 Brock., 156, also cited, decides that a conveyance to P. H. & Son, a mercantile firm, is a sufficient description of the son to enable him to take under the deed. This case is simply an application of the maxim, "*id certum est, quod certum reddi potest*," and has no bearing upon the subject.

The case of *Thomas* v. *Marshfield*, 10 Pick., 364, also cited, decides that a grant of a right of common to the inhabit-

ants for the time being of a certain territory (not incorporated), conveys no right to persons who were not inhabitants at the time of the grant; and that it is not essential to the validity of a grant that the grantee should be named, but if not named, he must be ascertained by description.

This was a case of the devolution of property. There were no words of inheritance in the deed, and the grantees took only a life estate. It was purely a question of construction as to who were included in the terms "inhabitants of a certain territory." It, therefore, has no bearing upon the case at bar.

The case of *Northampton* v. *Elwell*, 4 Gray, Mass. Rep., 81, also cited, decides that on a bond made to the Commonwealth "for the use of the town of Northampton," no action lies by the town, although the forfeitures belong to the town by statute.

Here, the town of Northampton was not a party to the contract, but the Commonwealth was the trustee of the town of Northampton, and was the only party who could maintain the action. In the case at bar S. Seymour did not contract as trustee for the benefit of his partners, but he and his partners contracted jointly.

The case of *Potter* v. *Sissons*, 2 Johns. Ca., 321, also cited, decides that, where by a patent certain lands were granted to A., B. and C. for themselves and his associates, being a settlement of friends, on the west side of Seneca Lake, to have and to hold to A., B. and C. as tenants in common for themselves and their associates, no legal estate vested except in the three persons named in the patent.

This was a case of the devolution of property, and the Court puts its decision expressly upon the ground, that there did not purport to be any conveyance to the associates.

The case of *Lechmere Bank* v. *Boynton*, 11 Cush., 369, also cited, decides that, where a statute incorporated three persons, their associates and successors, by the name of the "President, Directors and Company of the Lechmere Bank,"

by the word "associates" the Legislature meant those who were associated with the three persons named as the petitioners for the bank, and could not be intended to include other persons, who did not sign the petition for the bank, but merely afterwards subscribed for stock in the same.

This was simply a matter of construction as to who were included under the term "and their associates." What the Court would have held, had the language been "and such persons as they may associate with them," we can only conjecture. There was no question here as to the rights of undiscovered principals, or of other parties brought in under the express authority contained in the deed and so made contracting parties. There were no questions of ratification, or of estoppel.

There are cases of covenants, in which future contracting parties were contemplated, which have been upheld.

In *Small* v. *Marwood*, 9 B. & C., 300, by a composition deed the insolvent assigned to four trustees all his goods, chattels, &c., upon trust to sell and to apply the proceeds rateably in discharge of his debts among his creditors, *who should execute the deed*, provided that the trustees and the creditors should, on or before a given day, make proof of the debts required, and execute that deed. The deed was executed by two only of the trustees. It was held, that the deed was valid.

Wills v. *Southerland*, 4 Exch., (W. H. & G.,) 211. This was an action of covenant, by the plaintiff as secretary of a joint stock company, for calls. The declaration stated that, by indenture made by and between the several persons, whose names and seals were or *might thereafter* be thereunto subscribed, and who had sealed and delivered or *who might* seal and deliver the same, of the first part, and W. & M., persons nominated to be covenantees for the benefit of the company, of the second part, the parties of the first part covenanted with the parties of the second part, (*inter alia*,) to pay the calls: Held, the deed was good and that covenant could

be sustained. No point was made in this case that the defendant had executed the deed afterwards. This case was affirmed in Exchequer Chamber in *Southerland* v. *Wills*, 5 Exch., 715.

The defendant asserts that "the maxim, *id certum est*, &c., will not apply in this case, because the parties must be *in esse* and capable of being designated at the time of the execution of the contract."

1st. If this be so, no undiscovered principal could ever sue upon a contract made in his behalf.

2nd. The parties were *in esse*, and capable of being designated at the time the contract was made.

3rd. Or the contract was *in fieri* until the associates were named, when the delivery as to them took effect, and the plaintiffs offered to prove that they were immediately selected, and ratified the contract, and were thereafter dealt with by the defendant as the contracting parties.

The defendant cites Abbott on Shipping, 8 Ed., 242, 243a, where the learned author says: "the rule of law of England being that the force and effect, which that law gives to a deed under seal, cannot exist unless the deed be executed by the party himself or by another for him, in his presence and with his direction, or in his absence by an agent authorized to do so by another deed; and in every such case the deed must be executed by the principal."

This is undoubtedly the law; but it is not necessary that the deed should be executed by both parties. It is sufficient if it appear that the defendant has signed and sealed. Covenant lies for a breach of contract under seal, even though the covenantee does not seal. Chitty on Contracts, (11 Am. Ed.) 4.

The defendant again asserts that, "when the promise of one party is the consideration for the promise of the other, the promise must be concurrent and obligatory on both parties at the same time," and in support of this, he cites the following cases:

Tucker v. *Woods*, 12 Johns., 190. This case simply decides that, where A. signs a writing by which he declares that he will sell to B. his house at a certain price, this is a mere proposition and not a contract.

McKinley v. *Watkins*, 13 Ill., 140. This case decides that an instruction, which assumes that a party would be bound by a promise not assented to by the person to whom it is made, is erroneous. That a promise is void for want of mutuality, unless the person to whom it is made agrees on his part not to do the act, which forms the consideration of it.

James v. *Fulcord*, 5 Texas, 512. This case decides that mutual promises, to be obligatory, must be simultaneous.

It will be observed that—

1st. These are all cases of simple contract.

2nd. In the case at bar the promises are concurrent and obligatory on both parties at the same time.

3rd. There is an apparent exception to this rule in the case of a contract made by an agent without authority in the name of the principal, which is subsequently ratified by the principal. Such a contract, when ratified, is binding on both parties. *Omnis ratihabitio retrotrahitur et mandato priori equiparatur.*

4th. In all of the cases cited by the defendant, there was a proposition on one side, unaccepted by the other. In the case at bar, there were mutual promises.

SECOND. The defendant concedes, that an action of covenant may be sustained by one not a party to a deed-poll; but maintains that the rule is different in the case of a deed *inter partes*. *Pigot* v. *Thompson*, 3 B. & P., 149, n. 1, decides that a stranger cannot take advantage of a covenant for his benefit in a deed *inter partes*, but that in a deed poll he may. The defendant contends that the contract, which is the subject of this action, is a deed *inter partes*.

The defendant thus raises the question whether this is a deed poll or a deed *inter partes*.

It will be remembered, that the contract sued upon is sealed by the defendant only; although it contains promises by the plaintiffs.

In support of his proposition the defendant's counsel cites the following authorities:

Storer v. *Gordon*, 3 M. & S., 307. This was the case of a deed *inter partes, sealed by both parties*, and it decides that the immediate operation of such a deed is confined to those persons who were parties to it, and that no stranger to it can take under it, except by way of remainder, nor can any stranger sue upon any of the covenants that it contains.

It does not bear out the defendant's proposition.

The defendant cites 4 Com. Dig., Fait, A. 2, where it is laid down: "The seal is essential to the deed. Co. L., 6 a., 7 a. And therefore, regularly, it is not the deed of him, who has not sealed it. 2 Rol., 23 l. 25. (*Vide McDill's Lesse* v. *McDill*, 1 Dall., 63; *Long* v. *Ramsay*, 1 Serg. & Rawle, 72; *Taylor* v. *Glaser*, 2 Serg. & Rawle, 502.) If twenty seal with the same seal it is the deed of all." But there must be evidence that the twenty in fact adopted the same seal, and each party must be capable of sealing, which a *partnership*, having no seal, cannot do.

Again, 4 Com. Dig., Fait, C. 1 is cited: "Every deed is indented or poll." C. 2: "If one party executes his part of an indenture, it shall be *his* deed, although the other does not execute it." R. Cro. El., 212. Co. L., 229 a. "So if an indenture be between A. and B. of the one part and C. and D. of the other, whereby an estate is granted to C. and D., and there are covenants to A. and B. by them, though D. does not seal, if he agrees to the deed, he shall be bound by the covenants." Co. Lit., 231 a.

The proposition as stated, has been doubted in England. Platt on Cov., p. 18; 1 Chit. Pl., 14th Am. Ed., 119; and has been overruled in Ireland and America. *Brown* v. *McFarran*, 5 Irish Law Rep., 212, 216; *Trustees, &c.*, v. *Spencer*, 7 Ohio, 149. But, we can admit it, with the qualification, that in no sense is the deed declared on a deed *inter partes;* and that the

grantee is liable only in assumpsit upon his undertaking in the deed. This is settled by the overwhelming current of English and American authorities hereinafter cited and commented on.

Again: 4 Com. Dig., Fait C., 2. "So, though B. does not seal, A. and B. may have covenant, for B. is named as a party to the deed, and C. and D. covenant with him. R. 2 Rol., 22, l. 35. So, if a deed between A. on the part of B. of the one part, and C. of the other, and C. agrees to pay so much to B. without saying with whom he agrees, B, though a stranger, may maintain an action thereon against C. Dub. 3, Lev. 139." This is an authority for the right of Seymour & Company to maintain the present action.

Again: 4 Com. Dig., Fait, D. 1. "A deed poll is every deed not indented. Co. L., 229a." That is, every deed, which is not an indenture or deed *inter partes*, is a deed poll.

The defendant cites Coke Litt., 231 a; but it does not hold that a deed like the one under discussion is a deed *inter partes*. On the contrary, the author makes it very plain that an indenture or deed *inter partes* must be sealed by both parties, for it is said at 229 b, "And the making of an indenture is in two manners. One is to make them in the third person, another is to make them in the first person. The making in the third person is in this form: This indenture made, &c. In witnesse whereof the parties aforesaid to these presents interchangeably hath put their seales. *Or thus:* In witnesse whereof to the one part of this indenture remaining with the said V. of D., the said R. of P. hath put his seale, and to the other part of the same indenture remaining with the said R. of P., the said V. of D. hath put his seale. Dated, &c."

"The making of an indenture in the first person is in this form." Here follows a form in the first person, which concludes: "In witnesse whereof, as well I the said A. of B. as the aforesaid C. of D. to these indentures have interchangeably put our seales. *Or thus:* In witnesse whereof I,

the aforesaid A., to the one part of this indenture have put my seale, and to the other part of the same indenture the said C. of D. hath put his seal, &c."

The defendant cites Story on Agency, secs. 242—246, under the proposition that "*this is a deed inter partes.*" But a careful examination of the reference fails to disclose any relation to the proposition.

The defendant cites *Atlantic Dock Co.* v. *Leavitt*, 54 New York, 35. This was an action brought for a perpetual injunction. The plaintiff had conveyed certain land by deed, *signed by grantor alone, which contained express covenants on the part of the grantee.* The court held, that, although there be covenants in the deed for the grantee to perform, unless he sign and seal the deed, *it is a deed poll.* That the acceptance of the deed and the enjoyment of the estate granted, estops the grantee and all persons claiming under him from denying that the seal attached is his, as well as that of the grantor. That where mention is made in a deed that it is sealed by both parties, the indenture is the deed of the grantee as well as of the grantor. The deed furnishes evidence that the former has adopted the seal, and he is estopped from denying it.

1st. The case is against the current of authority in holding that the grantee is estopped to deny that he sealed the deed, as we shall endeavor to show hereafter.

2nd. This was an *obiter dictum* not necessary to the decision of the case. All that need have been said, was, that "the grantee, having accepted the deed, which contained undertakings on his part, was bound to perform them, as also his assignee, and that therefore the injunction must be granted."

3rd. In the case at bar, the partnership, S. Seymour & Co., who sign, can have no seal.

4th. Neither the attestation or any clause in the deed declared upon, indicates that the parties of the second part intended to seal it, or to adopt the seal of the corporation defendant.

5th. In *Moore* v. *Jones*, 2 Ld. Raym., 1541, it was held that, although a bond recites, "in witness whereof, we have set our hands and seals," yet that does not amount to such an averment, but the defendant must show that the bond or deed was actually sealed by the other.

The defendant cites *Holmes* v. *Aery*, 12 Mass., 137, which decides that a parol submission to arbitrators and a performance of their award is a good bar to an action founded on simple contract. It has no bearing upon the question.

It will be noticed that the only authorities cited by the defendant in this connection, are antiquated, or else have no bearing on the point, except the case of *Atlantic Dock Co.* v. *Leavitt*, and what is there said upon the point is an *obiter dictum*, and distinguishable, and against the weight of authority.

The only American case which we have been able to find which tends to support the defendant's proposition is the case of *Finley* v. *Simpson*, 2 Zabriskie, 311.

This was an action of covenant upon an instrument, purporting to be an indenture *inter partes*, containing mutual covenants, which was sealed by the grantor only, and which was accepted by the grantee. The defendant under his plea of *non est factum*, objected to the admission of this indenture in evidence as containing any covenant on his part, and raised the question, whether the plaintiff could sustain his action upon it. The court below, without deciding the question, admitted the said deed in evidence. The appellate court, in a very short opinion, admitted the general principle, that an action of covenant can only be sustained when the instrument, upon which the action is brought, has been actually signed and sealed by the party or by his authority, but held that the action of covenant can be maintained upon such an instrument as has been described.

The court do not decide that it is technically a deed *inter partes*.

The authorities cited in the opinion of the court do not

hold that such a deed is a deed *inter partes*, nor do they fully sustain the decision of the court.

The learned judge cites Coke on Littleton, 231 a., 230 c., note 1. Lord Coke does not indicate the form of action in which the grantees are liable. This is fully discussed by Mr. Platt in his work on Covenants, at pages 10 to 18, and in 1 Chitty's Pleadings, 119, and *Trustees, &c.*, v. *Spencer*, 7 Ohio, *ubi supra*; and *Brown* v. *McFarran*, *ubi supra*.

This dictum of Lord Coke is not supported by any reported *decision*, and is only countenanced by a dictum of Chief Justice Abbott in *Burnett* v. *Lynch*, 5 B. & C., 389.

Shepherd's Touchstone, 177, is also cited. This is an authority that the covenantees are bound, who accept the deed and enter under it, but it is no authority that an action of covenant would lie.

4 Cruise's Dig., 393, Title XXXII, Deed, ch. XXV, sec. 4, is also cited, but has no application, being upon a different subject.

3 Com. Dig., Covenant A. 1, is also cited. This reference only quotes Coke's Littleton, 231 a., and authorities there cited.

4 Com. Dig. Fait., A. 2, C. 2, is also cited. This reference only quotes Coke's Littleton, 231 a, and cases there cited.

Viner's Abridgment C., Condition I, A. 2, is cited, but the reference has no bearing upon the subject under discussion.

In *Dyer*, 13 b. (65), cited by the learned judge, it said *obiter* by Shelley that where a feofment was made by deed with divers covenants, and one of the feoffees sealed it, and the other not, but occupied and survived, that he should be bound by the seal of his companion.

It will be noted that here one of the covenantees sealed, and the Court only hold that his co-feoffer is bound by his act and seal, having entered with him. The Court does not intimate what action must be brought against him, whether assumpsit, covenant or case.

Besides, this dictum is in favor of the position of the plain-

tiffs. If the partners of Silas Seymour are bound by his agreements in the instrument and the defendant has sealed it, plainly they are entitled to some remedy, for the obligation must be mutual, and as the defendant has sealed, covenant is the only remedy available for them.

The case does not support *Finley* v. *Simpson*, as the Court do not even pretend to decide that covenant will be when the party has not sealed.

It does not support the proposition that this is a deed *inter partes*, for S. Seymour did not seal nor did any of the parties to the instrument intend that he should seal. If S Seymour *had* sealed, this case would be an authority that his partners were liable, in some form of action, in a suit by the present defendant against them.

1st. The case of *Finley* v. *Simpson* is against the current of authority, as we shall attempt to show hereafter.

2nd. The authorities cited in the opinion do not bear it out.

3rd. The case is distinguishable from the one at bar. For in the latter case the instrument does not purport to be an indenture, that is a deed *inter partes*, and the partnership could not seal. It would be an anomaly to hold that the firm of S. Seymour & Company, by implication, did that which they could not have done expressly, namely, made a covenant. See *Brown* v. *Bostian*, 6 Jones, 1.

On the other hand, the cases are numerous and of the highest authority, to the effect that such an instrument as that declared on is a deed poll and not a deed *inter partes*.

Mr. Platt, in his excellent work on Covenants, at page 10 *et seq.*, in effect says that the lessee's acceptance of a lease, under an instrument not sealed by him, may render him liable to a distress or to an action of debt for non-payment of rent, but it is apprehended that he cannot be liable in an action of covenant, as covenant can only be created by deed executed by the covenantor.

This view of the law has since been confirmed by Pennefather, C. J., in *Brown* v. *McFarran*, 5 Irish Law Reports,

212, 216, who said that the author was perfectly warranted in his deduction: that the action of covenant can only be supported (except in the case of a special custom or a contract with the Crown) against a party who by himself, or some one acting in his behalf, has executed the deed under seal. See also *Trustees, &c.*, v. *Spencer*, 7 Ohio, 149,

The older authorities sustain the position that it is not the deed of the party unless he actually seals, &c. "For if, in the indenture, made in the third person or in the first person, mention is mode that the grantor *only* has put his seal, and not the grantee, then is the indenture only the deed of the grantor," &c. Co. Lit. 230b: The seal is essential to the deed, and therefore, regularly, it is not the deed of him who has not sealed it. 4 Com. Dig., 272 Fait, A. 2.

A deed poll is one which is sealed by only one party. A deed made by one party only is not indented, but poll, or shaved quite even, and therefore called a deed poll or single deed. 2 Blacks. Com, 296 (ch. 20.)

Such an instrument is still a deed poll, although it contains mutual and dependent covenants, and on its face expressly describes and denotes who are parties to it.

A deed was drawn in the following terms: "This indenture, charter party, witnesseth, that Bendly, master and part owner of a ship, with the consent of Cooker, (the plaintiff,) the other part owner, lets the ship to the defendant for a voyage;" the defendant covenanted to pay Bendley such a sum as master, and covenanted with the said Bendley, and likewise with Cooker, to pay Cooker £300; and for nonpayment Cooker brought this action of debt on the charter party. The court were of opinion that, *as this was not an indenture between parties but only a deed poll*, the party might covenant with a stranger and also with other persons to do several other acts, for which every one severally might bring his action. Platt on Covenants, 7, and cases cited in note v.

A seal is essential to a deed; therefore it is not the deed of him who has not sealed it. *McDill's Les.* v. *McDill*, 1

Dallas, 63; *Long* v. *Ramsey*, 1 Sergt. & Rawle, 72; *Taylor* v. *Gloser*, 2 Sergt. & Rawle, 502.

A deed poll is the deed of the party making it, and concludes him. It is otherwise if it be an indenture, for an indenture is the deed of both parties, and both are concluded by it. *Giles* v. *Pratt*, 2 Hill, (S. C. R.,) *439.

Where A, by a deed poll, in consideration of the performances thereinafter mentioned, granted all his estate, real and personal, to B in fee on certain conditions, it was held that those conditions could be enforced; and the deed was expressly held to be a deed poll, being signed by the bargainor only. And the court say, "whether we consider the reservation of £60 per annum in the deed as rent, or as a consideration for the conveyance of the estate, we think it may be recovered in an action of assumpsit." *Rogers* v. *Eagle Fire Co.*, 9 Wend., 611.

A deed signed only by one party, although it contains covenants by the other party, is still a deed poll, and the grantee would be liable in an action of assumpsit upon his promises in the deed. *Guild* v. *Leonard*, 18 Pick., 511.

The case of *Yarborough* v. *Monday*, 2 Dev., (N. C. R.,) 493, was an action of assumpsit upon a written instrument in form of an indenture of apprenticeship. It was signed by plaintiff and defendant. There was but one seal to the instrument, which was placed opposite to the name of the plaintiff, his signature being the first. The court held, that ordinarily such an instrument is to be taken as the deed of that party only whose name is written nearest to the seal. But it may be shown by proof, either on the face of, or *dehors* the instrument, that the other party adopted the seal. Judge Henderson dissents from the court, upon the single point, that the deed contains internal evidence that both parties adopted the seal, because it commences, "this indenture, &c." The learned judge makes use of the following language: "It is true, that it is not calling a paper an indenture which makes it one, but its *actual indentation*. * *

Now, an indenture is a deed of two or more parties. *Each must seal to make it the deed of each party.*"

In the case at bar, the contract is nowhere called an indenture, and it contains no evidence that S. Seymour & Company, or S. Seymour adopted, or intended to adopt, the corporation seal.

The case of *Brown* v. *Bostian*, 6 Jones N. C. R., 1, is an authority directly in point. This was an action of covenant. The plaintiffs declared on the following written instrument:

"This contract and agreement, entered into this the 17th day of October, 1855, between John L. Brown for Brown, Brawley & Co., of the town of Charlotte, and State of North Carolina, and David Bostian, of the county of Alexander and State aforesaid, witnesseth: That the said Bostian, on his part, contracts and agrees to furnish Brown, Browley & Co., with one hundred barrels of good merchantable flour, to be delivered in lots of twenty barrels during each month, commencing on 1st November next. Said Brown, for Brown, Brawley & Co., contracts and agrees to pay to the said Bostian seven dollars per barrel for each barrel so delivered. It is mutually agreed between the parties, that any act of God shall nullify the above contract and agreement.

Witness our hands and seals the day first above written.

(Signed) BROWN, BRAWLEY & Co. [SEAL.]
(Signed) DAVID BOSTIAN. [SEAL.]

The breach assigned was the non-delivery of the flour. Brown was one of the firm. The defendant objected, that the action could not be maintained in the name of Brown, Brawley & Co., but that it should have been brought in the name of John L. Brown alone. The Court, composed of Pearson, Battle and Ruffin, sustained the action, and say, "We see no good reason, whether technical or otherwise, why the defendant should not be held to have bound himself to the firm, the present plaintiffs. Had Brown signed

and sealed the instrument in his own name, it might have presented the technical difficulty of being a deed *inter partes*, in which no person but a party could sue upon it; and so are all the numerous authorities referred to by the defendant's counsel. But for the reasons already stated this cannot be regarded as a deed *inter partes*. It is, in legal effect, the deed of the defendant, and the evidence of a written contract on the part of the plaintiffs; and it is well settled that upon such an instrument, one party may be sued in debt or covenant as the case may require, while the other can only be sued in assumpsit. *Whitehead* v. *Riddick*, 12 Ired. L., 95, is a case in point in favor of the action."

By *Whitehead* v. *Riddick*, *supra*, it is decided, that, where an agreement under seal purported to be between A. B. "for and on behalf of the Albemarle Swamp Land Company of the one part," and " B. R. of the other part," and stipulated that the party of the second part should get on the land of "the party of the first part," a certain quantity of lumber and deliver it, &c., and in conclusion it is said, " in witness whereof A. B. for and on behalf of the party of the first part, being the Albemarle Swamp Land Company, and B. R. as the party of the second part, have hereunto set their hands and seals;" and the agreement was signed by "A. B. for and on behalf of the Albemarle Swamp Land Company, [seal]," and signed and sealed by the defendants; this was a contract between the Company and B. R., and that A. B. could support no action on it in his own name, but the action must be in the name of the Company.

The instrument, upon which the present action was instituted, is in form identical with that declared upon in *Brown* v. *Bostian*, *supra*, and *Whitehead* v. *Riddick*, *supra*, with the single exception, that in *Brown* v. *Bostian* the partnership attempted to seal, and in *Whitehead* v. *Riddick* the plaintiff signs " W. B. Whitehead, for and on behalf of the Albemarle Swamp Land Company. [Seal]." While in the case at bar, the contract is signed by " S. Seymour & Co.,"

without a seal and without any intention to seal. The case of *Brown* v. *Bostian*, therefore, settles the law in North Carolina, that such a contract is a deed poll and not a deed *inter partes*.

THIRD. If the contract declared upon were a deed *inter partes*, that is, the deed of both parties, covenant would lie against Seymour & Company. But, it has been repeatedly held that covenant will not lie against a party not sealing.

Assumpsit and not covenant, is the proper remedy where the plaintiff has executed the deed and the defendant has not. *Moore* v. *Jones*, 2 Ld. Raym., 1536.

Covenant was brought on a lease not signed by lessor, but executed by the defendant, and it was held covenant would not lie. *Cardwell v. Lucas*, 2 M. & W., 111.

In *Emery* v. *Neighbour*, 2 Haist., 142, an action of debt, the articles of agreement were signed and sealed by the husband and wife, but not by trustees. The latter acted under it and were sued. The Court say that it was no covenant. This case fully meets the proposition, that the acceptance of a deed and acting under it, makes it the defendant's deed and his covenant. The same principle is decided in *Smith* v. *Emery*, 7 Haist., 53; *Ludlom* v. *Wood*, 1 Pa., 40; *Billderback* v. *Powner*, 2 Haist., 64.

Covenant will lie only when the instrument is actually signed and sealed by the party or by his authority. A mere recognition of the contract, though under seal, will not sustain the action. *Gail* v. *Nixon*, 6 Cow., 445.

Mr. Platt does not hesitate to assert, that no instance can be found of an action of covenant having been entertained by the courts against one claiming under a deed poll. Platt on Covenants, page 16; also p. 10, *et seq*; *Brown* v. *McFarran*, 5 Irish Law Reports, 212, 216; see also *Trustees, &c., Spencer*, 7 Ohio, 149.

A deed poll, when accepted by the grantee, becomes the

mutual act of the parties, and a stipulation on the part of the grantee, though it cannot be declared upon as his deed, yet by force of his acceptance, is a valid contract on his part, upon which a suit may be maintained. *Newell* v. *Hill*, 2 Met., 180, (per Shaw, C. J.) The same language is used in *Burbank* v. *Pillsbury*, 48 N. H., 475, and *Harriman* v. *Fork*, 55 N. H., 471.

A. conveyed to B. by deed recited to be "an indenture *inter partes*, to which they had interchangeably set their hands and seals." In the deed was contained a covenant on the part of B. to pay rent to A. A. alone sealed the deed, but B. accepted it and entered. It was held that covenant will not lie against B. because he did not seal the deed. *Manle* v. *Weaver*, 7 Pa. St., 329.

When the grantor only signs the deed, assumpsit and not covenant is the proper form of action. *Huff* v. *Nickerson*, 27 Me. 106.

Where land is conveyed by deed poll, and the grantee enters under the deed, certain duties being reserved by the deed to be performed by him, it was *held*, that for a breach of these duties assumpsit, and not covenant, is the proper form of action, as no action lies against the grantee on the deed. *Goodwin* v. *Gilbert*, 9 Mass., 510, cited with approval in *Bowen* v. *Bell*, 20 Johns., 338.

An action of covenant for rent will not lie against a lessee where the lease is a deed signed by the lessor only, although the lessee may have accepted the lease and occupied and held under it during the full term, without paying the rent. *Johnson* v. *Muzzy*, 45 Vt., 419; following *Hinsdale* v. *Humphrey*, 14 Conn., 431; *Trustees, &c.*, v. *Spencer*, 7 Ohio, 149; *Goodwin* v. *Gilbert*, 9 Mass., 510; and *Gale* v. *Nixon*, 6 Cow., 445.

Covenant cannot be maintained, except against a person who, by himself or some person for him duly authorized, has executed a deed under seal or who has agreed by deed to do a certain thing, (except in cases mentioned in Co. Lit.,

231a.) *Burnett* v. *Lynch*, *ubi supra*. The exception is criticised in Platt on Covenants, page 18, and expressly repudiated in *Trustees, &c.*, v. *Spencer*, 7 Ohio, 149, and doubted in 1 Chit. on Pl., page 119. The exception is but a dictum.

An action of covenant will not lie against a lessee or his assignee for rent under a lease sealed by the lessor only. The acceptance of the lease by the lessee does not make it his deed. *Hinsdale*, v *Humphrey* 15 Conn., 431.

An action of covenant will not lie by lessor against lessee for rent reserved on a lease sealed only by the lessor. *Trustees, &c.*, v. *Spencer*, 7 Ohio, 149.

Where one grants land by deed poll, and any duty is imposed by the deed on the grantee, assumpsit will lie, and not covenant. *Pike* v. *Brown*, 7 Cush., 133.

Articles of agreement were sealed by the plaintiff, but not signed and sealed by the defendants. The court say: "Assumpsit was the proper form of action. Covenant will lie only when the instrument is actually sealed by the party or by his authority. A recognition of the contract, although in writing and under seal, will not make it a covenant." *Gate* v. *Nixon*, 6 Cowen, 448. The same point was decided in *Tribble* v. *Oldham*, 5 J. J. Marsh. 137; *Minor* v. *DeLand*, 19 Pick., 266; *Wilson* v. *Brechemin*, Brightly, (Pa.,) 445.

An instrument in form an indenture executed by one party only, if it contains requisite words to pass the property, will operate as a deed poll. (per SHAW, C. J.) *Eason* v. *Turbeil*, 9 Cush., 407.

An action of covenant can only be maintained on an instrument under seal. The fact that a deed recites that it is "signed, sealed and delivered" does not estop the grantor from saying that it is not his deed. Where a deed lacks a seal, actions on the covenants contained in it should be assumpsit, not covenant. *Davis* v. *Judd*, 6 Wis., 85.

Where land is conveyed by a deed poll and the grantee enters under the deed, certain duties being reserved to be performed by him, assumpsit and not covenant is the proper

action. *Bowen* v. *Bell*, 20 Johns., 338, citing *Goodwin* v. *Gilbert*, 9 Mass., 514.

Covenant can only be maintained on a deed, which has been sealed. If the deed recites "signed, sealed and delivered," this is not enough. It must be actually sealed by the defendant. *Van Santvoord* v. *Sanford*, 12 Johns., 192, citing *Cabel* v. *Vaughan*, 1 Wms.' Saunders, 291, n. 1.

The grantee of a deed poll, who is bound to perform certain duties by the deed, is not liable in covenant, but only in assumpsit. *Maine* v. *Cumston*, 98 Mass., 317, 320.

Unless a covenantee actually executes the instrument, although there be conditions for him to perform, it is not technically a covenant on his part. *Nugent* v. *Riley*, 1 Met., 117, 120.

The defendant, on page four of brief, immediately after the proposition that this is a deed *inter partes*, declares that "no subsequent ratification will cure the defect." The language is a little obscure. We assume that by "defect," is meant an alleged want of authority in Silas Seymour to bind his firm. But, the plaintiffs offered to prove that he had such authority before the contract had been signed. The defendant cites several authorities in this connection, viz: 1 Chitty on Pl. (10 Am. Ed.), 290. The author here says: "The same rule renders it imperative that the consideration noted in the declaration should be proved to the extent alleged; and in general, when the consideration proved falls short of that which is stated in the declaration, as the foundation for the promise, the variance will be equally fatal as when the proof exceeds the statement." And then he simply cites *Sanderson* v. *Griffith*, 5 B. & C., 909, and *Shaw* v. *Robinson*, 8 D. & R., 423, without comment. We have already, as we trust, distinguished *Sanderson* v. *Griffith*. The latter case has no bearing whatever upon the subject.

Atwood v. *Lockhart*, 4 McLean, 350, also cited, decides that where two persons purchase goods, the vendor cannot maintain an action against them and a third party whom

they afterwards take into partnership. It does not touch the point.

The case of *Ridgeway* v. *Phillip*, 1 C. M. & R., (Ex.) 414, is cited by the defendant in this connection. This case simply decides that where a party holds himself out as a partner after the contract is made, he is not estopped from showing, that in fact, he was not a partner at that time. It does not support the proposition for which it is cited.

Chitty on Contracts (6 Am. Ed.), 253 a., is referred to. Here the author, discussing declaration in assumpsit, cites *Sanderson* v. *Griffith*, which we distinguished.

Dodge v *Hopkins*, 14 Wis., 630, is cited by the defendant. This case decides that where a contract for the sale of land is not binding on the owner of the land, because made by a person who assumed to act as his agent, without any authority, it is not binding on the other party; and that no subsequent act of the owner in ratification of the contract could make it obligatory on the other party without his assent. But it is said in *Lawrence* v. *Taylor*, 5 Hill, 113, that such adopted authority relates back to the date of the transaction, and is deemed in law the same to all purposes as if it had been given before: and in *Newton* v. *Bronson*, 3 Kernan, 594, the court say; that a subsequent ratification is as effectual as an original authority, is well settled. In the case at bar, there was not only a subsequent ratification by the members of the firm of S. Seymour & Co., which was made known to and acted upon by the defendant, and work performed by them under the contract in pursuance of such ratification, but there was also a prior command.

The case of *Dodge* v. *Hopkins*, is opposed by the current of authority. See Chitty on Contr., (11 Am. Ed.,) pp. 290, 291 and 292, and cases cited. See also *Bird* v. *Brown*, 4 Exch., 798; *Ridgeway* v. *Wharton*, 6 H. L. Cas., 296.

As the contract of the agent is in law the contract of the principal, the latter may come forward and sue thereon; although at the time the contract was made, the agent acted as and

appeared to be the principal. And the power of the agent to claim and enforce performance of the contract is subservient to this right of the principal; so that, if the principal has interfered and has required or obtained a completion of the contract with himself personally, the agent's right of action ceases. 1 Chitty on Contracts, (11 Am. Ed.) 303, 304, and notes; also 1 Addison on Contracts, sec 51.

The rule may be stated thus: Where one contracts as agent without naming a principal, his acts enure to the benefit of the party, although at the time uncertain or unknown, for whom it shall turn out that he intended to act, provided the party, thus entitled to be principal, ratify the contract. 1 Parsons on Contracts, (5th Ed.) 49 and note (g); Metcalf on Contracts, 112.

Mr. Story, in his work on Agency, (9th Ed.,) sec. 244, says: "If the agent has made a contract without authority from his principal, or beyond his authority, and it is afterwards ratified, the principal may generally sue and be sued thereon, in the same manner and with the same effect as if he had originally given the authority. Therefore, if a person, without authority, has made a purchase of goods for his principal, and has signed a bought note therefor, if the principal, after full knowledge of the transaction, ratifies it, that will make the signing a good signing within the Statute of Frauds, so as to bind both the parties to the contract." See *Maclean* v. *Dunn*, 4 Bing., 722; *Soames* v. *Spencer*, 1 Dowl. & Ry., 32; *State of Wisconsin* v. *Torinus*, 26 Minn., 1; *State* v. *Shaw*, 28 Iowa, 67.

Mr. Evans, in his work on Agency, (1st Am. Ed.,) at page 71, says: "As soon as there is a ratification the principal steps into the place of the agent. He becomes immediately invested with all the *rights* and all the duties that flow from the transaction or conduct by being ratified."

In the case at bar there was an immediate ratification by plaintiffs, communicated to the defendant before the defendant was or could be held liable upon its contract. The obligation of the latter was to pay for the construction of the

railroad, as the work progressed. No work, no pay. The road was to be completed by a day certain. Therefore, the defendant could not possibly have been prejudiced by the ratification; and the reasoning of *Dodge* v. *Hopkins* does not apply. Wharton's Agency, sec. 78; Story's Agency, secs. 245, 246.

FOURTH. The counsel for the defendant says: "If this is a deed *inter partes*, and S. Seymour, the party who signed, estopped to deny that the seal is the common seal of both parties, there has been no ratification under seal by the other parties, even if the firm were in existence at the time of making the contract."

The reply is, that this is not a deed *inter partes*. S. Seymour & Company have signed, but neither S. Seymour nor S. Seymour & Company have sealed, or have attempted to seal, nor have they manifested any intention to seal, or to adopt the seal of the corporation defendant. Neither he nor they are estopped to deny that the seal is the seal of both parties. *Brown* v. *Bostian*, 6 Jones, 1.

No ratification under seal by the associates of S. Seymour is necessary, because it was a simple contract on their part. The defendant could have been sued in covenant, though none of the plaintiffs had either signed or sealed. Besides, no ratification at all was necessary, there having been a prior command.

The case of *Delius* v. *Cawthorn*, 2 Dev., 90, cited by defendant, decides that an agent acting under a formal power cannot bind his principal by deed, but a bond executed by an agent thus constituted is not the bond of the agent, and the fact that he exceeded his authority does not subject him to an action as the obligor. The only remedy against him is by an action on the case. This decision has no application to the proposition under which it is cited.

The case of *Fisher* v. *Pender*, 7 Jones, N. C. Rep., 483, is likewise cited. It decides that when, upon the face of an instrument, it appeared that one signed, sealed and delivered it, as the deed of the firm of which he was a member,

and in order to bind the firm, and not as his own individual deed, he could not be held individually bound.

The plain inference from these authorities is, that even if S. Seymour had affixed a seal to the signature of the partnership, so far from being estopped to deny that that seal was the seal of the partnership or his own seal, the court would hold, upon a plea of *non est factum* in an action of covenant against S. Seymour alone, that it was not his seal, and he could be sued only in an action of assumpsit.

Cabell v. *Vaughan*, 1 Wm's. Saunders, 291, n. 1, decides that though the bond recites "In witness whereof we have hereunto set our hands and seals," yet the plaintiff must show that the defendant did actually seal.

Davis v. *Judd*, 6 Miss., 85, decides that the fact that a deed recites that it is "signed, sealed and delivered," does not estop the grantor from saying that it was not his deed.

In the contract sued upon in the case at bar, there is nothing anywhere to indicate an intention on the part of S. Seymour, or of S. Seymour and Company to seal the instrument. Observe, the contract does not in its premises purport to be an indenture, but simply "Articles of agreement made and concluded this 27th day of August," &c.

And the attestation clause, so far from leaving it an open question whether Silas Seymour or his firm have adopted the seal of the corporation, expressly negatives that idea. The language is, "In witness whereof the parties hereto have interchangeably set their hands, the said railroad company by its president, in Fayetteville, N. C., this the 27th day of August, 1855.

(Signed) C. B. Mallett,
President of the Western Rail Road Co.
(Signed) S. Seymour & Co.

This contract signed and the seal of the company affixed by order of the Board of Directors.

(Signed) Jno. M. Rose,
[Seal of Corporation.] Sec'y for W. R. R. Co."

FIFTH.—The defendant says: "To the second exception it is quite clear that plaintiffs could not offer parol evidence to explain, qualify or contradict the meaning of the contract as apparent on the face of the writing."

But the plaintiffs have not sought to qualify or contradict the written contract. It is well established that to enable an undiscovered principal to sue or be sued, he may be proved by parol. Wharton on Evidence, 949, 950. A latent ambiguity, can always be explained by parol. Starkie on Ev., 8th Am. Ed., 678 *et seq.*

It is insisted, that the term "may associate" implies possibility, contingency, &c., and expressly excludes certainty, and that it indicates that a company will be formed in the future; that there is no ambiguity in the language, opening the door for construction.

This position we have attempted to answer in the plaintiffs' first brief. If the contract, unsealed by S. Seymour, had been made in his name alone, and signed "S. Seymour," but in truth for, and in behalf of his undiscovered principals, his copartners, they could have maintained this action. The plaintiffs' case is stronger than this. The defendant in effect has said to S. Seymour, "we contract with you, or your undiscovered principals, and we leave blanks in our deed, which you can fill by inserting the names of other associates whom you may select, and when you select them, and they accept the terms of this contract, it shall take effect as to each one from the date of his acceptance;" or else, the defendant has said, "until you have brought in all, whom you propose to associate with you, let the contract remain in an unfinished state, and when the last one has come in, let it go into full operation."

It is certain that a party may sign and seal a deed to-day, and deliver it to an attorney in fact, so constituted under seal, who to-morrow may insert the name of a grantee selected by himself, and make a good delivery of the deed. *Simms v. Hervey*, 19 Iowa, 273, holds, (Judge Dillon de-

livering the opinion of the court,) that a blank in a deed may be filled with the grantee's name by an attorney of the grantor authorized under seal. See also *Preston* v. *Hall*, 23 Gratt., 600; *Davenport* v. *Speight*, 2 Dev. & Bat., 381; *Schintz* v. *McNamy*, 33 Wis., 299.

The defendant, without doubt, gave S. Seymour the authority under seal to add other parties to the contract; and when added they contracted directly with the defendant. So, whether the fact be that the plaintiffs had previously sent Silas Seymour to make this contract for them, and to put it into this form giving him the right to bring in others, at his discretion: or Silas Seymour *immediately* and at time of the execution of the contract, in the exercise of his authority from the defendant given under seal, associated the other plaintiffs with him; or Silas shortly thereafter, in pursuance of the said authority, associated the said parties as his co-partners, and made known the same to the defendant, and they were dealt with by the defendant as contracting parties; the plaintiffs can maintain this action.

In any view of the case, *they* were bound to the defendant for a faithful fulfilment of their contract, and the terms of the instrument would not have excused them; so the danger of their escaping liability, suggested by the defendant, is entirely imaginary.

It was not necessary that S. Seymour or his partners should seal the contract, nor was it necessary that the assent, whether immediate or future, of the associates of S. Seymour, should appear on the face of the instrument. It might be proved *aliunde*. In *Ives* v. *Hazzard*, 4 R. I., 14, it was held, that it was not necessary that the assent of both parties should appear on the face of the instrument any further than that the writing should import a contract between the parties and be signed by the party to be charged therewith. It was in proof that the complainant agreed to take the land at the price named in the agreement. This may be poved *aliunde* the instrument. The contract was therefore

mutual. A plaintiff may maintain covenant on a sealed instrument, although it be so defectively executed on his part that only assumpsit can be maintained against him. *Directors* v. *McFadden*, 1 Grant (Pa.) Ca., 230. A party named in a covenant may join in an action upon it, though he did not seal. *Smith* v. *Ransom*, 21 Wend., (N. Y.,) 202.

SEVENTH. The learned counsel suggests, that the defendant might have been unwilling to contract with the firm then in existence, while quite willing to contract with S. Seymour, and any other persons whomsoever to be selected by him (!); and therefore that the contract must be construed to mean that no members of S. Seymour's then firm should become contracting parties.

But we observe this defendant immediately afterwards, encouraging these very men to proceed under a contract, which authorized S. Seymour to bring in any others as contracting parties, and to expend their time and labor and money in the construction of its road; and having received the substantial result of such expenditure, it now seeks to avoid payment on the plea that they were not the contracting parties. From making such a defence the defendant is estopped by a principle of law, of common application, which is rooted in honesty and fair dealing.

EIGHTH. The introduction or premises of the deed are not conclusive as to the parties to the same. The whole deed must be read together; and so read, it will be noted that the subsequent portions of the deed and its mode of execution indicate that there were other parties to the deed than S. Seymour at the moment of its execution.

Words in the introduction of a deed describing A. and B. as the parties of the first part, are controlled by the decisive fact, that one of them did not sign and seal the deed. In such a case the covenants in favor of the party of the first part will be held to inure only to the benefit of the one who did sign. *Phil., Wil. & Balt. R. R. Co.* v. *Howard*, 13 How., 307. If it does not appear in the body of a deed who are the

parties to it, the persons who execute it shall be taken to be the parties. *Nurse* v. *Frampton*, 1 Ld. Raym., 28.

NINTH. It has been established law ever since *Slingsby's case*, 5 Coke's Reports, 19 a, that when joint covenantees may sue, they must sue. *Petrie* v. *Bury*, 3 B. & C., 353; Chitty on Contracts (10 Am. Ed.), 119-120, note *e*, and cases there cited, and 122 note *i*; 1 Chitty on Pleading, 14 (Am. Ed.), 11. S. Seymour could not have maintained this action in his own name alone.

JOHN W. HINSDALE,
Counsel for Plaintiff in error.

OFFICE SUPREME COURT U. S.
FILED
OCT 27 1882
JAMES H. McKENNEY, Clerk.

16-320

In the Supreme Court of the United States,

October Term, A. D. 1882.

SILAS SEYMOUR AND OTHERS
vs.
THE WESTERN RAILROAD CO. } *NO. 60.*

DEFENDANT'S BRIEF.

1. The plaintiffs brought their action of covenant against the defendant in the year 1856, and the pleadings are drawn according to the common law method of procedure. This method of pleading prevailed in North Carolina at the time this action was brought, and until the year 1868.

The "Code System" of pleading now prevails in that State; but this does not affect this action. The Code of Civil Procedure of that State, provides in reference to suits pending at the time it took effect and became operative, that, "the said suits shall be proceeded in and tried under existing laws and rules applicable thereto." N. C. Code Civil Procedure, sec. 402; Green vs. Moore, 66 N. C. R.,425; Teague vs. James, 63 N. C. R. 344; Waldrop vs. Green, Id. 344.

2. The plaintiffs named in the declaration are Silas Seymour, Silas M. Seymour and Alvin C. Mortin, citizens of New York, and Lester L. Robinson, a citizen of California, "trading in the name and style of S. Seymour & Company."

They declare, upon certain articles of agreement, dated at Fayetteville, North Carolina, on the 27th day of August, 1855, * * * * "then and there made and concluded and agreed upon, between the said plaintiffs, of the one part and the said Western Railroad Company, the defendants, of the other part," &c., &c.; and they allege that "the said defendant did thereby covenant, promise and agree to and with the said plaintiffs," &c., &c. See Declaration, page 2, of Transcript of Record.

And the parties, plaintiff and defendant, are so described, on the part of the plaintiffs, throughout the pleadings.

At the trial, the plaintiffs offered in evidence a paper writing purporting to be "Articles of agreement, made and concluded this twenty-seventh day of August A. D. eighteen hundred and fifty-five, between the Western Railroad Company of the first part, and Silas Seymour, and such other parties as he may associate with him, under the name of S. Seymour & Company, of the city of New York, of the second part," &c. See Articles of Agreement, on page 11, of Transcript.

The defendant objected to the admission of this paper writing in evidence, on the ground, that it did not support the allegations and specifications as to the articles of contract and covenant sued upon and specified in the declaration—that the declaration alleged articles of contract and a covenant by and between certain parties named therein, while the articles of covenant offered in evidence embodied and evidenced a contract and covenant by and between other and different parties.

The Court sustained this objection.

It is stated in the Bill of Exceptions (See page 10 of Transcript) that * * * "the plaintiffs having proven the execution of the contract declared upon," &c., * * * * * "offered it in evidence."

This is not strictly true, as is manifest, for the very question raised was, whether the paper writing offered in evidence was the articles of contract declared upon—the defendant

insisting that it was not, and could not be, and the Court sustaining this objection.

3. The plaintiffs excepted to the ruling of the Court in excluding the articles of contract and covenant offered by them in evidence.

They then offered evidence tending to prove that the plaintiffs named in the declaration composed the firm of S. Seymour & Company at the date of the contract so offered in evidence and continued to do so until the work on the road ceased; that Silas Seymour contracted with the Railroad Company "on behalf of and by authority of the firm of S. Seymour & Company which was then composed of the parties above named," &c.; that the defendant knew that the persons named composed the firm of S. Seymour & Company and were working on defendant's road under the contract offered in evidence.

They then offered evidence tending to show "that the said Silas Seymour subsequently to the execution of the said contract, and in pursuance thereof, associated the said S. M. Seymour, L. L. Robinson and A. C. Mortin with himself, under the name of S. Seymour & Company, as contractors under the said contract, and made known the same to defendants," &c., &c.

4. The substance of the plaintiffs' exceptions seems to be three-fold:

1. That the Court refused, on objection of the defendant, to admit the articles of contract offered in evidence.

2. That the Court refused to allow the plaintiff to introduce evidence tending to prove that the plaintiffs named in the declaration composed the firm of S. Seymour & Company at the date of the articles of contract offered in evidence.

3. That the Court refused to allow the plaintiffs to introduce evidence tending to show that subsequent to the execution of the articles of contract offered in evidence, Silas

Seymour, who executed the same, associated with him S. S. Seymour, L. L. Robinson and A. C. Mortin, under the name of S. Seymour & Company, as contractors, and the firm, as thus organized, proceeded to execute the contract.

5. In all covenants, there must be a covenantor and a covenantee, and these must be certain. There must be an agreement between the parties to the same, that certain facts and things exist; or that the parties, one or the other, or some of them, or some one, will do, or abstain from doing a certain thing or things. The assent or consent of the parties must be mutual. Bouvier Law Dic. "Covenant," and the authorities there cited.

As a general rule, only those who are parties to a covenant can maintain an action on it, and the parties must be ascertained, designated and recognized at the time of the making of the same.

1 Chitty Pl. 2 and 3 and 117.
2 Wait's Arct. and Def. 357.
1 Arch. N. P. (355.)

Now, the articles of agreement offered in evidence, do not purport to ascertain or designate any existing covenantee at the time of their execution, except Silas Seymour; nor do they by name, or with any reasonable certainty, designate any persons to take benefit of, or be affected in any way, by the agreement. The plaintiffs, other than Silas Seymour, were wholly unknown—they did not then agree with the defendant—there was no mutuality of consent or assent—they were not bound to the defendant, nor was the defendant bound to them, because they were not known—even Silas Seymour did not purport to be authorized to act for or bind them; indeed, he did not know who they were to be. The language used in the first and describing paragraph of the Articles of Agreement is, * * "and Silas Seymour, and such other parties as he may associate with him under the name of S. Seymour & Company, of the city of New York of the second part witnesseth," &c.

Here, there is no suggestion that there was any such exist-

ing firm—it was not even suggested that the plaintiffs were thereafter to create such a firm and become partners therein. If there was a provision for these partners, they were not named. It seems, that Silas Seymour made a contract and afterwards set about to see whom he could get to join him in his enterprise. When he found such parties as would and did join him, they did not become parties to the articles of agreement in a legal sense, however, they may have acquired rights under the articles that could be enforced in a court of equity.

Let us suppose, that after the partnership of S. Seymour & Company was formed, (if it was formed), S. Seymour and his partners had failed to go on with the work as provided by the contract, is it not plain, that in such a case the defendant could not have maintained an action against any of the partners, except S. Seymour, upon the articles of agreement, for breach of contract? In that case, what legal relations would subsist between the defendant and the plaintiffs, other than S. Seymour?

A proper construction of the agreement between the parties is this: Silas Seymour agreed that he and such other persons as he he might thereafter associate with himself, would perform the work agreed to be done for the considerations specified, and when the other plaintiffs became his associates, he and they were co-partners as among themselves, but as to the defendant, S. Seymour was the only party having a legal right as against the defendant, and against whom the defendant had a legal right. S. Seymour was a trustee for himself and his co-partners, and their rights, if any, must be enforced through and by him in a court of law.

Chitty on Pl. Supra.

2 Shep. Touch. 234-5.

6. The Articles of Agreement offered in evidence are in substance and effect, a deed inter partes—the contracting terms—the covenants therein—are mutual and dependent

upon each other—each of the parties, are bound to the other, and the obligations are mutaal. Note the language employed and running through the whole instrument.

In Article 1, it is provided that, "The said S. Seymour & Co., partners of the second part, hereby agree to construct," &c.

In Article 3 it is provided, in these words: "It is further argreed that the party of the second part," &c.: In the same article it is further provided in these words: "It is further mutually agreed that the parties of the first part," &c. In Article 4 the language is: "It is further agreed by and between the parties hereto," &c. In Article 5, 6, 7, 8, 9 and 10, the same mutually-binding language is repeatedly employed. And the attesting clause runs thus: "In witness whereof the parties hereto have interchagably set their hands," &c.

Transcript, page 11.

If the defendant had sued Silas Seymour in covenant upon the Articles of Agreement, he would have been estopped from denying that the articles were under seal.

Storer vs. Gordon, 3 Maul. & Selwyn 307.
Cruis' Digest, "Deed."
Co. Litt., 231 a.
4 Com. Digest, 157.
Atlantic Dock Co. vs. Leavett, 54 N. Y. 35.
2 Wait's Act. & Def. 356-57,
and cases there cited.

When the promise of one party is the consideration for the promise of the other party, the promises must be concurrent and mutually obligatory on both parties at the same time.

Tucker vs. Wood, 12 Jones 190.
McKinly vs. Watkins, 13 In. 140.
James vs. Talwood 5, Texas 512.

While an action of covenant may be sustained by a person designated with certainty, not a party to a deed poll, but for whose benfit the covenants were made, yet in a deed

inter partes, no one can sue in covenant upon the promises, who is not a party to the deed.

Chesterfield vs. Colliery Co.,
3 H. & C. 677.
Saunders vs. Tillery, 12 Pick., 554.
Spencer vs. Field, 10 Wend. 87.
Berkley vs. Hardy, 5 B. & C., 355.
2 Wait's Act. & Def., 356-7.

7. The description, in the Articles of Agreement, "and such other parties," &c., is not sufficient to create or designate one in whom a legal interest vests. The covenant, like a bond, is a deed.

Northampton vs. Elwell, 4 Gray, 81.
Lechmere Bank vs. Boynton.
11 Cushing, 369,
especially pp. 379, 380, 381.
Abbott on Shipping, (8 ed.,) 242-243, a.
Railroad Co. vs. Howard, 13 How., 307.
(19 Cur. S. C. R. 512.)

"When a deed is made inter partes, no one who is not expressed to be a party, can sue on a covenant contained in it, and this is not a mere rule of construction, but a rule of positive law.

Chesterfield vs. Colliery Co.
3 H. & C. 677.
Spencer vs. Field, 10 Wend. 87.
Saunders vs. Tillery, 12 Pick. 554.
Wil. & Man. R. R. Co. vs. Wright.
5 Jones' Law, (N. C.), 304.
Barnwell vs. Insurance Co.
2 Cr. 419.
(1 Cur. S. C. R., 514.)

"A patent for certain lands was granted to A., B. and C., for themselves and their associates, being a settlement of Friends on the west side of Seneca Lake, to have and to hold the same to A., B. and C., as tenants in common, and their

of Agreement in question, because they speak for themselves, and because, further, the proposed testimony was contradictory of them. The language used is, * * * "and Silas Seymour and such other persons as he may associate with him," &c.

1 Wait's Ac. & Df., 112-118,
and the cases there cited.

The term "may associate" implies possibility, contingency, &c., and expressly excludes certainty. It can mean nothing else than may hereafter associate, and could not refer to an association then existing, without violating all rules of construction, and plaintiff is estopped from setting it up in direct contradiction of the deed.

There is no ambiguity in the language, opening the door for construction.

If the firm were already in existence, they, if intended, were already associates; the use of the firm signature, not under seal, if within the scope of their business, bound them, and it was the duty of the active partner to designate them by a form of words not only capable of that construction, but exclusive of all others.

Suppose it had been to the advantage of the company to deny the act of Silas Seymour, and they had claimed the construction the defendant now contends for, the language would plainly have excluded them.

Suppose the firm had become hostile, on a contest between themselves, Silas Seymour could certainly have relied on the language of the deed to show that he was contracting for an association yet to be formed.

The construction the defendant contends for, is rather fortified than weakened by the fact offered to be proved, that plaintiffs were operating already in partnership under that style, and as he expressly provides for such (others) as he may associate, it would seem to exclude those already in association, on the maxim expressio unius, &c.

The defendant might have been unwilling to contract with the firm then in existence, while quite willing to contract

with Silas Seymour and such others as he might associate, &c. . If he had intended, and the defendant had so understood him, to contract for his present partnership, the language would naturally have been, "with S. Seymour and his associates now comprising the firm," &c., or "under the style," &c."

Suppose it had been, "articles of agreement between the Western Railroad Company, of the one part, and such parties as may associate themselves together," &c., could it be contended that any subsequent association or ratification could make this good?

The only difference between the case just suposed and ours is, that S. Seymour undertakes to sign the name of the future firm and to bind those who are not yet associated, and who are not now capable of contracting or being contracted with.

11. The court properly rejected the testimony tending to show that the firm of S. Seymour & Company was organized subsequent to the time the Articles of Agreement were executed; because, it was not competent to make new partners to the covenant. The proposed testimony was immaterial.

Besides, this offer of testimony could scarcely be regarded as serious. The plaintiffs first proposed by the witness to show that the company was organized and in existence before and at the time of the execution of the Articles of Agreement; and after that, to show by the same witness, that the company was organized subsequently to the execution of the articles! This is self-contradictory and absurd!

12. If the court properly excluded the instrument offered in evidence, it was not proper to admit testimony tending to show what labor, if any, was done by the plaintiffs, nor, indeed, for any purpose, until a covenant, such as the declaration described, was proven by competent evidence. The question is, can the plaintiffs sustain their action upon the articles of agreement offered in evidence; not whether they

might maintain an action upon a quantum meruit, or find relief in a court of equity.

13. But if in any possible view of the articles of agreement offered in evidence, the plaintiffs could maintain an action upon them, they must do so by proper pleadings—proper averments descriptive of the covenant sued upon, and as to the relations of the plaintiffs relative to the same, and how and when they came to be a party thereto, &c., &c.

14. Most of the cases cited by the counsel for the plaintiffs were founded on contracts not under seal—simple contracts—partnership contracts. These do not apply to this case. There is a material difference between contracts under seal and those not under seal. The former are of higher dignity, &c., &c., and cannot be explained, modified, &c., by simple contracts, &c.

2 Bl. Com. (465), note 36.
4 Kent's Com. 503, (454.)
Story on Agency, secs. 160 and 160 a.
Smith on Contracts, (5) et. seq.

In a few cases cited for the plaintiffs, where the instrument sued upon was under seal—a deed poll—all the parties suing and claiming benefit, were in esse, ascertained and identified at the time the instrument under seal sued upon, was executed and delivered. There was some ascertained, designated person or persons, parties to the deed, whether named by their names or otherwise pointed out, to whom the deed was delivered, or for whom it was delivered.

In this case, Silas Seymour could only accept the deed for himself, for the other plaintiffs were not known, nor could they be ascertained, as his partners, at the time of the execution and delivery of the Articles of Agreement—the deed was never delivered to the plaintiffs as a company, for the company did not have the semblance of existence at the date of the deed and its delivery; nor were the persons expected

to compose the company, known at that time by Silas Seymour or any one else.

15. It is suggested by counsel for the plaintiffs, that the defence is unconscientious, because the defendant had recognized the plaintiffs as contractors, and has received and had benefit of work done by them without compensation. The reply to this is, that the defendant's plea under oath denies all liability upon the merits of the matter in litigation, pleads payment and set off, and other substantial pleas. This can scarcely have any bearing upon the questions before the court.

MERRIMON & FULLER,
COUNSEL FOR DEFENDANT.

might maintain an action upon a quantum meruit, or find relief in a court of equity.

13. But if in any possible view of the articles of agreement offered in evidence, the plaintiffs could maintain an action upon them, they must do so by proper pleadings—proper averments descriptive of the covenant sued upon, and as to the relations of the plaintiffs relative to the same, and how and when they came to be a party thereto, &c., &c.

14. Most of the cases cited by the counsel for the plaintiffs were founded on contracts not under seal—simple contracts—partnership contracts. These do not apply to this case. There is a material difference between contracts under seal and those not under seal. The former are of higher dignity, &c., &c., and cannot be explained, modified, &c., by simple contracts, &c.

2 Bl. Com. (465), note 36.
4 Kent's Com. 503, (454.)
Story on Agency, secs. 160 and 160 a.
Smith on Contracts, (5) et. seq.

In a few cases cited for the plaintiffs, where the instrument sued upon was under seal—a deed poll—all the parties suing and claiming benefit, were in esse, ascertained and identified at the time the instrument under seal sued upon, was executed and delivered. There was some ascertained, designated person or persons, parties to the deed, whether named by their names or otherwise pointed out, to whom the deed was delivered, or for whom it was delivered.

In this case, Silas Seymour could only accept the deed for himself, for the other plaintiffs were not known, nor could they be ascertained, as his partners, at the time of the execution and delivery of the Articles of Agreement—the deed was never delivered to the plaintiffs as a company, for the company did not have the semblance of existence at the date of the deed and its delivery; nor were the persons expected

to compose the company, known at that time by Silas Seymour or any one else.

15. It is suggested by counsel for the plaintiffs, that the defence is unconscientious, because the defendant had recognized the plaintiffs as contractors, and has received and had benefit of work done by them without compensation. The reply to this is, that the defendant's plea under oath denies all liability upon the merits of the matter in litigation, pleads payment and set off, and other substantial pleas. This can scarcely have any bearing upon the questions before the court.

MERRIMON & FULLER,
COUNSEL FOR DEFENDANT.

SUPREME COURT, U.S.
FILED
SEP 22 1882
CLERK

S. SEYMOUR & CO., vs. THE WESTERN RAILROAD COMPANY.	*Supreme Court of the United States,* OCTOBER TERM, 1881.

The plaintiffs, in an action of *covenant*, commenced in 1856, declared upon certain Articles of agreement made, &c., between Silas Seymour, Silas M. Seymour and Alvin C. Morton, citizens, &c., of the State of New York, and L. L. Robinson, a citizen, &c., of the State of California, of the one part, and The Western Railroad Company, defendant, of the other part.

At the trial, plaintiffs offered in evidence a paper writing purporting to be articles of agreement between The Western Railroad Company, of the first part, and Silas Seymour and such other parties as he may associate with him under the name of S. Seymour & Co., of the city of New York, of the second part.

It is stated in the Bill of Exceptions, that "the plaintiffs having proven the execution of *the contract declared upon*," &c. This cannot be taken literally, for the point in difference is, whether the instrument offered *was* the contract declared upon, the defendant objecting on the ground of variance:

I. This action having been brought under the old system of pleading and practice, is to be tried under the rules existing before the adoption of the Code of Civil Procedure. C. C. P. of N. C., Sec. 402; Green vs. Moore 66 N. C. Rep., 425; 63 N. C. Rep., 91; 63 N. C. Rep., 344.

The plea of *non est factum* puts in issue whether the defendant has executed a deed of which the legal effect and substance are correctly stated in the declaration. 2nd Phillips on Evidence, 89; 1st Chitty on Pleading (10th Am. Ed.), 433; Marsh vs. Brooks, 11 Ired., N. C. Rep., 409.

The proper mode of taking advantage of a misdescription in the declaration is by the plea of *non est factum* without craving *oyer*. 1st Chitty on Pleading (10th Am. Ed.), 8*a*, Note 3, 433, 487—518.

If it be said that defendant by his other pleas in avoidance shows that he must have had *oyer*, for he could not have pleaded certain conditions without it; we say that plaintiff's replication has cured any defects in defendant's pleading. 1st Chitty on Pleading, 671.

A material variance between the allegation and the proof is fatal. 2d Saunders on Pleading and Evidence, 1190.

A misdescription of the contract with regard to the parties thereto and with whom it was made, will also in general be fatal as a variance, at the trial. 1st Chitty on Pleadings (10th Am. Ed.), 307; Sellers vs. Streator, 5 Jones, N. C. Rep., 261; Newsom vs. Thomson, 2d Ired., N. C. Rep., 277; 4 Whart., 68; Platt on Covenants, 5; 1 Salkeld, 197.

This *is* a material variance.

The examination of this proposition opens the question as to the legal effect and substance of the instrument offered. The question is, can the plaintiff sustain *this* action upon the contract offered in evidence; not whether a recovery might be had upon a *quantum meruit*, nor whether Equity would afford relief.

Covenant lies for a breach of contract under seal, and to a contract, there must be parties *in esse* who must assent. Chitty on Contracts (11th Am. Ed.), 4, 21—23; Pothier's Definition, 12 Note; Saunderson vs. Griffiths, 5 B. & C, 909; Metcalf vs. Bruin, 12 East., 400; Hoffman vs. Porter, 2 Brock., 156; Thomas vs. Marshfield, 10 Pick, 367; Co. Litt., 3*a*; 4 Kent., 462.

The description, "and such other parties, &c," is not sufficient to create or designate one in whom a legal interest vests. This covenant, like a bond, is a deed. Northampton vs. Elwell, 4 Gray, 81.

A deed to "A. B. & C., for themselves and their associates being a settlement of friends," vests the legal estate only in the three persons named. Potter vs. Sisson, 2 John. Ca., 321.

A fortiori, would a deed to A. B. & C. and such other parties as they may associate with them as a settlement, vest the title only in the three named as a party in *presenti* capable of a designation is more certain than one to come *in esse in futur*. You can no more covenant with associates yet to be ascertained and united into partnership, than you can with a corporation yet to be organized. In Lechmere Bank vs. Boynton, 11 Cushing, 369, it is held that the term "and his associates" comprised those only who were already associated in the petition for incorporation, and this is the converse of our case. In this case it is said: "In all matters of grant, whether it be of property, or of franchises, rights, powers and immunities; whether it be by private or public act; especially when great public and private interests are concerned, it is impossible to overrate the importance of certainty in designating the subject matter of the grant, the objects and purposes for which, and the persons to whom it is made, certainty is the father of right and the author of peace, uncertainty engenders doubt, and doubt leads to controversy, litigation and strife, which is the best purpose of all wise legislation and able and cautious jurisprudence not only to adjust, but to prevent altogether."

The maxim *in certum est*, &c., will not apply in this case, because the parties must be in *esse* and capable of being designated at the time of the execution of the contract. An instance of the application of the maxim is found in Brown vs. Bostian, 6 Jones, 81.

In Abbott on Shipping, 242—243*a*, 8th Edition, the technical rule is laid down as follows:

"The rule of the law of England being that the force and effect which that law gives to a deed under seal cannot exist unless the deed be executed by the party himself, or by another for him, in his presence and with his direction; or

in his absence by an agent authorized to do so by another deed, and in every such case the deed must be made and executed in the name of the principal."

The grantee must be a person in being, if to take immediately. 2d Shep. Touch., 234—235.

Where the promise of one party is the consideration of the promise of the other, the promises must be concurrent and obligatory on both parties at the same time. Tucker vs. Wood, 12 Jones, 190; McKinley vs. Watkins, 13 Ired., 140; James vs. Fulcord, 5 Tex., 512; Commercial Bank vs. Nolan, 7 Harr. (Miss.), 508.

While an action of covenant may be sustained by one not a party to a deed poll, but for whose benefit the covenants were made; in a deed *inter partes* no one can sue in covenant upon the promises, who is not a party to the deed. 1st Chitty on Contracts, 77; 1st Chitty on Pleading, 4; Chesterfield vs. Colliery Co., 3d H. & C., 677; Frontin vs. Small, 2d Ld Raymond, 1418; Sounders vs. Filly, 12 Pick., 554; Spencer vs. Field, 10 Wendell, 87; Kent vs. Edmonston, 4 Jones' Law, 530; 2d Waite's Actions & D., 357; Berkly vs. Hardy, 5 B. & C., 355.

This *is* a deed *inter partes;* the covenants therein are mutual and dependant upon each other; on its face it expressly describes and denotes who are parties to it; the plaintiff would be estopped from denying that it was under seal if he were sued in covenant upon it. Stone vs. Gordon, 3d Manle & Selwyn, 322; Cruises' Digest, Deed; Co. Litt., 231*a*: 4 Com. Digest, 157, Fait A. 2, C. 2; Story on Agency, Secs. 242—246; Atlantic Dock Co. vs. Leavett, 54 N. Y., 35; 12 Mass., 137; 2d Waite's Actions & D., 356.

No subsequent ratification will cure the defect. 1st Chitty on Pleading (10th Am. Ed.), 299; 5 B. & C., 909; Ridgway vs. Philip, 1 C. M. & R. (Ex.), 414; Alwood vs. Lockhart, 4 McLean, 350; Chitty on Contracts (6th Am. Ed.), 253*a*; Dodge vs. Hopkins, 14th Wis., 630.

"Where two parties to an instrument enter into mutual covenants which are interchangeably considerations for each other, if either party neglects or refuses to bind himself, the instrument is void for want of mutuality, &c. Where such an instrument is executed by one professing to be, but not in fact being, authorized to act as an agent for one of the principal parties, no subsequent act of this principal, in the nature of ratification, can render the contract binding upon the other party."

Then if this is a deed *inter partes* and S. Seymour the party who signed, estopped to deny that the seal is the common seal of both parties, there has been no ratification under seal by the other partners even if the firm were in existence at the time of making the contract. Fisher vs. Pender, 7 Jones N. C. Rep., 483; Delins vs. Cawthorn, 2 Dev., 90.

II. To the second exception it is quite clear that plaintiffs could not offer parol evidence to explain, qualify or contradict the meaning of the contract as apparent on the face of the writing. 1st Waite's Actions & D., 112—118.

The term "may associate" implies possibility, contingency, &c., and expressly excludes certainty. It can mean nothing else than may *hereafter* associate, and could not refer to an association then existing, without violating all rules of construction, and plaintiff is estopped from setting it up in direct contradiction of deed.

There is no ambiguity in the language opening the door for construction.

If the firm were already in existence, they, if intended, were already associates; the use of the firm signature, not under seal, if within the scope of their business, bound them, and it was the duty of the active partner to designate them by a form of words not only capable of that construction, but exclusive of all others.

Suppose it had been to the advantage of the firm to deny the act of Seymour, and they had claimed the construction we now contend for, the language would plainly have excluded them.

Suppose the firm had become hostile, on a contest between themselves, Seymour could certainly have relied on the language of the deed to show that he was contracting for an association yet to be formed.

The construction we contend for is rather fortified than weakened by the fact offered to be proved, that plaintiffs were operating already in partnership under that style, and as he expressly provides for such (others) as he may associate, it would seem to exclude those already in association, on the maxim *expressio unius*, &c.

The defendant might have been unwilling to contract with the firm then in existence, while quite willing to contract with S. Seymour and such others as he may associate, &c. If he had intended, and the defendant had so understood him, to contract for his present partnership, the language would naturally have been "with S. Seymour and his associates now comprising the firm," &c., or "under the style, &c."

Suppose it had been "articles of agreement between The Western Railroad Company, of the one part, and such parties as may associate themselves together," &c., could it be contended that any subsequent association or ratification could make this good?

The only difference between the case just put and ours is, that S. Seymour undertakes to sign the name of the future firm and to bind those who are not yet associated and who are not now capable of contracting or being contracted with.

III. If it were proper in His Honor to have ruled out the instrument upon which this action of covenant was based, it was not proper to admit testimony in this action as to the labor performed, nor indeed as to anything else until the covenant was proven, the breach of which was alleged.

JAS. C. McRAE,
For Appellee.

16-322

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~318.~~ 52

DANIEL TYLER, APPELLANT,

vs.

ROBERT B. CAMPBELL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 11, 1879.

SUPREME COURT OF THE UNITED STATES.

No. 318.

DANIEL TYLER, APPELLANT,

vs.

ROBERT B. CAMPBELL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Subpœna	1	1
Bill of complaint	3	1
Answer	14	10
Replication	35	28
TESTIMONY FOR COMPLAINANT.		
Testimony of Daniel Tyler	37	28
Samuel A. Halsey	61	49
TESTIMONY FOR DEFENDANT.		
Testimony of Robert B. Campbell	74	60
Gertrude E. Carew	99	81
EXHIBITS FOR COMPLAINANT.		
Exhibit A (agreement between Monroe and Tyler)	101	82
B (agreement between Monroe, Tyler, and Campbell)	102	83
C (note of Monroe for $4,500 in favor of Tyler)	103	85
D (letter of Monroe to Campbell)	104	85
E (letter of Campbell to Allen)	104	85
F (letter of Campbell to Allen)	104	86
G (letter of Campbell to Allen)	105	86
H (letter of Campbell to Allen)	105	86
I (letter of Campbell to Allen)	105	86
K (letter of Campbell to Allen)	106	87
L (affidavits of Tyler and Campbell)	106	87
M (letter of Campbell to Allen)	113	93
N (statement of stock bought, &c.)	114	93

	Original.	Print.
Exhibit O (check of Monroe for $5,000 in favor of Campbell)	114	94
P (letter of Campbell to Halsey)	114	94
Q (letter of Campbell to Little)	115	94
R (letter of Tyler to Campbell)	116	95
S (letter of Campbell to Tyler)	121	99
T (letter of Tyler to Campbell)	121	99
U (letter of Campbell to Tyler)	122	100
V (letter of Tyler to Campbell)	122	100
EXHIBITS FOR DEFENDANT.		
Exhibit No. 5 (letter of Campbell to Tyler)	124	100
No. 6 (letter of Campbell to Tyler)	124	101
No. 7 (letter of Campbell to Tyler)	125	101
No. 8 (letter of Campbell to Tyler)	125	102
No. 9 (letter of Campbell to Tyler)	126	102
No. 11 (letter of Campbell to Tyler)	126	102
No. 12 (letter of Campbell to Tyler)	127	103
No. 13 (letter of Campbell to Tyler)	127	104
No. 14 (letter of Campbell to Tyler)	128	104
No. 15 (letter of Little to Campbell)	129	105
No. 16 (letter of Tyler to Campbell)	129	105
No. 17 (letter of Campbell to Tyler)	129	106
No. 18 (letter of Campbell to Tyler)	130	106
No. 22 (letter of Campbell to Tyler)	130	107
No. 23 (letter of Campbell to Tyler)	131	107
No. 26 (letter of Campbell to Tyler)	132	108
No. 27 (letter of Campbell to Tyler)	132	108
No. 1 (proposition of Monroe to Tyler)	133	108
No. 2 (letter of Tyler to Campbell)	133	109
No. 3 (letter of Tyler to Monroe)	133	109
No. 4 (letter of Campbell to Tyler)	134	109
No. 28 (letter of Tyler to Campbell)	134	110
No. 29 (letter of Tyler to Monroe)	134	110
No. 30 (letter of Tyler to Campbell)	135	110
No. 31 (letter of Monroe to Tyler)	135	110
No. 32 (letter of Tyler to Campbell)	135	111
No. 33 (letter of Tyler to)	136	111
No. 34 (letter of Tyler to Campbell)	136	111
No. 35 (letter of Tyler to Campbell)	136	112
No. 36 (letter of Tyler to Campbell)	137	112
No. 37 (letter of Tyler to Campbell)	138	113
No. 38 (letter of Tyler to Campbell)	139	114
No. 39 (letter of Tyler to Campbell)	139	114
No. 40 (letter of Tyler to Campbell)	139	114
No. 41 (Monroe's statement asking loan)	140	114
No. 42	140	115
No. 43 (letter of Allen to Monroe)	141	115
No. 44 (statement of Morris County Bank)	141	116
No. 45 (letter of Monroe to Allen)	142	116
No. 46 (letter of Allen to Campbell)	142	117
No. 47 (letter of Monroe to Campbell)	142	117
No. 48 (letter of Tyler to Campbell)	143	117
No. 49 (proposition of Monroe)	143	117
No. 50 (summons, complaint, and judgment, case of Tyler v. Monroe	143	118

	Original.	Print.
Exhibit No. 51 (summons, complaint, and judgment case of Tyler v. Monroe)	143	118
No. 52 (summons, complaint, and judgment, Tyler v. Monroe)	147	121
No. 53 (letter of Little to Campbell)	149	123
No. 54 (letter of Little to Campbell)	150	123
No. 55 (letter of Campbell to Little)	150	124
No. 56 (letter of Little to Campbell)	151	124
No. 57 (letter of Campbell to Little)	152	125
No. 58 (letter of Campbell to Little)	152	126
No. 59 (letter of Tyler to Campbell)	153	126
No. 60 (letter of Tyler to Campbell)	153	127
No. 61 (letter of Tyler to Campbell)	154	127
No. 62 (letter of Little to Campbell)	154	128
No. 63 (letter of Little to Campbell)	155	128
No. 64 (letter of Allen to Campbell)	156	129
Hearing of cause	157	129
Opinion of Judge Blatchford	157	129
Final decree	169	132
Petition of appeal to Supreme Court	170	133
Bond on appeal to Supreme Court	173	133
Citation on appeal to Supreme Court	178	135
Clerk's certificate	180	135

1 The President of the United States of America to Robert B. Campbell, greeting:

You are hereby commanded that you personally appear before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit court, in equity, on the first Monday of December, A. D. 1868, wherever the said court shall then be, to answer a bill of complaint exhibited against you in the said court by Daniel Tyler, a citizen of the State of New Jersey, and do further and receive what the said court shall have considered in that behalf. And this you are not to omit under the penalty on you of two hundred and fifty dollars.

Witness honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New York, on the 19th day of October, in the year one thousand eight hundred and sixty-eight, and of the Independence of the United States of America the ninety-third.

[L. S.] KENNETH G. WHITE, *Clerk.*
MILLER & PECKHAM, *Sol'r.*

The defendant is required to enter appearance in the above cause in the clerk's office of this court on or before the first Monday of Dec'r, 1868, or the bill will be taken pro confesso against him.

K. G. W., *Clerk.*

2 (Indorsed:) I depute Charles McCoy to execute the within process.

R. MURRAY,
U. S. Marshal.

OCT. 19, 1868.

Personally served on Robert B. Campbell Oct. 22, 1868.

ROBT MURRAY,
U. S. Marshal.

Filed Oct. 26, 1868.

3 In the circuit court of the United States for the southern district of New York. In equity.

DANIEL TYLER, A CITIZEN OF THE STATE OF New Jersey,
vs.
ROBERT B. CAMPBELL, A CITIZEN OF THE State of New York.
} On bill, &c.

To the honorable the judges of the United States circuit court for the southern district of New York, in equity:

Your orator, Daniel Tyler, of the county of Monmouth, in the State of New Jersey, and a citizen of the said State, brings this his bill of complaint against Robert B. Campbell, a citizen of the State of New York as aforesaid; and thereupon your orator complains and says that on or about the first day of January, one thousand eight hundred and sixty-five, the said Robert B. Campbell, then being an attorney and counsellor at law practising in the city and State of New York, applied

to your orator to lend to certain other parties, to wit, James Monroe and Thomas E. Allen, or one of them, the sum of at least twenty-five thousand dollars; that it was stated to your orator by said Robert B. Campbell that the said Thomas E. Allen was president of the Morris County Bank, a corporation existing by the laws of the State of New Jersey, then in process of liquidation, but which was expected to be able soon to pay its debts and resume business, and of which said James Monroe was a large stockholder; that they desired money in order therewith to discharge the debts of said corporation; that said corporation was then possessed of two bonds and mortgages made by Theodore T. Wood to said Morris County Bank, one bond and mortgage dated the sixth day of June, one thousand eight hundred and fifty-six, to secure the sum of one hundred thousand dollars, and the other dated the eighth day of October, one thousand eight hundred and fifty-seven, to secure seventy-five thousand dollars, said mortgages respect-
4 ively covering and conveying certain valuable lands in New Jersey, commonly known as the Hibernia Mine; that the said corporation was likewise possessed of a certain lease of said mine, executed by the Trenton Mining Company as lessee; and it was proposed that said mortgages and lease should be assigned as security for the said money proposed to be borrowed from your orator; that the said mortgages were then in process of foreclosure in the court of chancery of New Jersey, and that the lands mortgaged would soon be sold, and any money advanced by your orator be thereby speedily repaid to him; or that in the election of your orator he might take as payment for said money loaned an interest in said mine, free from all incumbrance except the lease to said Trenton Iron Company, said parties proposing to purchase the same under said mortgages, and it was stated that the loan should be repaid by the first day of August thereafter unto your orator.

And your orator shows that being himself not a man of regular business, and confiding greatly in the integrity and business capacity and professional faithfulness and knowledge of said Robert B. Campbell, your orator agreed to loan such money as he could raise to said parties, provided that said Robert B. Campbell should be your orator's trustee, should as such take an assignment of said bonds, mortgages, and lease in trust for your orator, and should take care of your orator's interest in regard of said loan and of said securities therefor, and do all things necessary and proper to provide for the safety of your orator's investment in said bonds and mortgages, and to secure the repayment of such sums as your orator might advance, with interest.

And your orator shows that said Robert B. Campbell agreed to act as such trustee for your orator, to receive an assignment of such bonds, mortgages, and lease, and in all things to protect your orator's interest in regard of said loan and the said securities therefor, and to do everything necessary or proper to provide for the safety of your orator's investment in said bonds and mortgages, and to secure the repayment of the money your orator might advance, with interest, and generally to act to the best of his skill and understanding to protect your orator from loss in the premises.

And thereupon such proceedings were had that your orator, on or about the first day of February, one thousand eight hundred and sixty-five, delivered to said Robert B. Campbell, in order that he thereby might raise the sum of twenty-five thousand dollars, bonds of the United States commonly called five-twenty coupon bonds, and acknowledging together the sum of twenty-five thousand dollars as due by

the United States of America to the bearer, with interest at six per cent., with unpaid coupons annexed securing such interest; which bonds were delivered, as your orator is informed and believes, to said Monroe, and negotiated at rates realizing more than their par value, and at the same time said James Monroe and your orator entered into an agreement substantially as follows, that is to say:

5 "This agreement, made the first day of February, one thousand eight hundred and sixty-five, between James Monroe, of the city of New York, party of the first part, and Daniel Tyler, of the same place, party of the second part, witnesseth:

"That whereas the said party of the first part is indebted to the said party of the second part in the sum of twenty-five thousand dollars for money and securities loaned and advanced to him:

"Now, therefore, said party of the first part hereby agrees to repay the said indebtedness on or before the first day of August, one thousand eight hundred and sixty-five, as hereinafter stated, and in the manner to be elected by the said party of the second part, his heirs or assigns.

"Either to convey to the said party of the second part, free from all encumbrances except the lease hereinafter mentioned, one undivided quarter interest in sixty-one acres of land, or thereabouts, at Rockaway, in the county of Morris and State of New Jersey, including the iron mine now worked by the Trenton Iron Company, and known as the Hibernia Mine, subject to the lease thereof now held by the said Trenton Iron Company, and one-quarter interest in the said lease, or else twenty-five thousand dollars in cash, with interest thereon from the date hereof, at and after the rate of six per centum per annum, notice of such election to be given to the said party of the first part ten days prior to the first day of August, one thousand eight hundred and sixty-five, such notice to be given either personally or by depositing the same in the post-office of the city of New York, to be directed to post-office box No. 5352.

"And whereas it may be that the said party of the first part shall not have acquired the title to the said land in fee and free from incumbrance on or before the said first day of August, it is hereby agreed that the said party of the second part shall not be compelled to elect whether he will receive a conveyance of one-fourth part of said land and lease or the sum of twenty-five thousand dollars in cash until thirty days after said party of the first part shall have acquired such land and lease in fee, and shall have given him notice thereof.

"And the said party of the first part hereby agrees that he will, within thirty days from the date hereof, assign and convey to the said party of the second part, or to such person as he shall designate, two certain bonds and mortgages made by Theodore T. Wood to the Morris County Bank, one thereof dated June 6th, 1856, to secure the sum of one hundred thousand dollars, and the other thereof dated October 8th, 1857, to secure the sum of seventy-five thousand dollars, and also the lease hereinbefore mentioned, to be held as collateral security for the due performance of all the terms and conditions of this agreement.

"And the said party of the first part reserves to himself the right to collect and retain all rent that may accrue on the said lease prior to the said first day of August, one thousand eight hundred and sixty-five.

6 "In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written."

And your orator further shows that afterwards, and on or about the eighth day of February, in the year aforesaid, your orator delivered to

said Robert B. Campbell, at his request, and as his trustee, to be advanced to said James Monroe and Thomas E. Allen, or one of them, United States bonds of the value in market of twenty thousand dollars, which twenty thousand dollars it was agreed between said Campbell and your orator should be lent to said Monroe and Allen, or one of them, on the same terms and security on which the said twenty-five thousand dollars was loaned; and on the eleventh day of said February the said "The Morris County Bank," by assignment under their seal and the signature of said Thomas E. Allen, being their president, duly assigned and set over to James Monroe, for a consideration therein expressed of fifty thousand dollars, the said bonds and mortgages and lease, which said assignment was conditioned to be void if the said bank should pay him fifty thousand dollars on the eleventh day of June next thereafter, with interest at six per cent., payable monthly, which assignment was duly proved in order to the registering thereof according to the laws of New Jersey; and by another indenture of assignment of the same date the said James Monroe, under his hand and seal, transferred and set over unto said Robert B. Campbell the same bonds, mortgages, and lease, constituting the said Campbell his attorney and the attorney of the "Morris County Bank," to collect the same, and with a like condition, to be void on such payment of fifty thousand dollars on the fifth day of August thereafter, with interest, which assignment was duly acknowledged in order to the registering thereof according to the laws of New Jersey; and on the same eleventh day of February, one thousand eight hundred and sixty-five, a certain agreement, under seal, was entered into by and between said James Monroe, of the first part, your orator, of the second part, and the said Robert B. Campbell, of the third part, which agreement is substantially as follows, that is to say:

"This agreement, made this eleventh day of February, one thousand eight hundred and sixty-five, between James Monroe, party of the first part, Daniel Tyler, party of the second part, and Robert B. Campbell, party of the third part, witnesseth:

"That whereas the said party of the first part has this day assigned to the said party of the third part two certain bonds and mortgages, both thereof made by Theodore T. Wood and Mary B., his wife, to the 'Morris County Bank,' one thereof dated the sixth day of June, one thousand eight hundred and fifty-six, to secure the sum of one hundred thousand (100,000) dollars, and the other thereof dated the eighth day of October, one thousand eight hundred and fifty-seven, to secure the sum of seventy-five thousand dollars, and also a certain mining lease made and entered into by and between the said Theodore T. Wood and the Trenton Iron Company, bearing date the first day of April, one thousand eight hundred and sixty-one, and assigned by the said 'The Morris County Bank' to the said party of the first part as collateral security for a loan to the said bank of the sum of fifty thousand (50,000) dollars;

"And whereas the said party of the first part has, in and by two certain agreements in writing, one thereof dated the first day of February instant, and the other thereof dated the eighth day of February instant, covenanted and agreed to transfer to the said party of the second part, or to such person as he might designate for that purpose, the absolute title to the said two mortgages and lease, on or before the tenth day of March next, to be held by him as collateral security for the true and faithful performance of all the terms and conditions of the said two agreements;

"And whereas the said party of the second part has designated the said party of the third part as the person to whom the absolute title of the said two mortgages and lease should be conveyed:

"Now, therefore, it is mutually understood and agreed, that in case the absolute title to said two mortgages and lease shall not be transferred to said party of the third part on or before the said tenth day of March next, that the amounts of money due and payable by the said two agreements, and by a certain joint and several note of the said party of the first part and Thomas E. Allen for the sum of twenty thousand ($20,000) dollars, dated the eighth day of February instant, shall, at the option of the party hereto of the second part, become and be immediately due and payable, anything in the said agreements or note to the contrary thereof in any way notwithstanding.

"And it is hereby mutually understood and agreed that in case of any default in the payment of the said note, or in case of any default in the payment of the amounts of money to be paid under the terms of the said agreement bearing date the first day of February instant, or of any default in the performance of any of the terms and conditions in any of the said two agreements contained, that the said party of the second part shall have the right and authority to direct and compel the said party of the third part to proceed with the foreclosure and sale of the premises covered by the said mortgages with the greatest speed and promptness allowable by law.

"Or he may, if he see fit, direct and compel the said party of the third part to sell the two mortgages and lease at auction, for cash, at such place in the city of Newark, in the State of New Jersey, as he may elect, on fifteen days' notice to the said party of the first part, such notice to be given either personally or by depositing a notice in the post-office, directed to him, in the city of New York, at post-office box 5352, and after advertising a notice of such sale ten days in some newspaper published in said city of Newark.

8 "In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written."

And your orator prays leave to produce and refer to said agreements and assignments respectively, if it be necessary so to do. And your orator further shows that the promissory note of the said Monroe and Allen for twenty thousand dollars, dated the eighth day of said February, was given by them to said Campbell on receipt from your orator through him of United States bonds which realized that sum, and was for the payment of said sum in six months from date, as your orator believes.

And your orator further sheweth that afterwards, and on or about the seventeenth day of April, in the same year, the said Campbell applied to your orator for, received, and paid over to said Monroe, for the use of himself, or of himself and said Thomas E. Allen, a further sum of four thousand and five hundred dollars, and the said Monroe made and delivered to said Campbell, for your orator his promissory note, dated on said seventeenth day of April, whereby he promised, sixty days after date, to pay to the order of your orator forty-five hundred dollars, with interest from date, value received, payable at the office of Charles Carew, 76 South street, meaning in New York City, and on the same day addressed and delivered to said Campbell a letter, signed by him, substantially as follows, that is to say:

"NEW YORK, *April 17th*, 1865.

"ROBERT B. CAMPBELL, Esq.:

"SIR: I have this day given to Gen'l Daniel Tyler a promissory note for the sum of four thousand five hundred dollars, payable at sixty days from this date, with interest from date, and hand you herewith a certificate for one hundred shares of the Morris County Bank, as collateral thereto, and I further direct you to hold any proceeds arising from the sale of the property mortgaged by Theodore T. Wood and wife to the Morris County Bank, which mortgages are now held by you, and to pay thereout the amount of said note in case the same should not be punctually paid by me at maturity."

To which note and letter your orator prays leave to refer.

And so your orator shows there was placed in the hands of said Robert B. Campbell, as his trustee and attorney, and paid over by him to said Monroe and Allen, or one of them, at the various times and under the agreements above set forth, sums of money amounting altogether to forty-nine thousand and five hundred dollars, to be invested by lending the same on the security of the assignment of said bonds, mortgages, and lease; that said sums of money were so invested and lent; that such assignment was unto said Campbell made; and that the same was entirely adequate and more than adequate to secure the repayment of said sums of money lent by your orator, with all interest thereon.

9 And your orator shows that on or about the first day of March, one thousand eight hundred and sixty-five, decree was made in chancery of New Jersey for the sale of said land and mining property conveyed in and by said mortgages and demised by said lease; that the existence of said decree was well known to said Robert B. Campbell within a few days after its date; that he and the said Monroe and Allen contemplated the buying the property under the said decree by the said Monroe and Allen, or one of them, or the Morris County Bank; that the said Monroe and Allen were large owners of stock in said corporation, and either owned or expected soon to own all the capital stock thereof and the property of said bank, including said mortgages and the mortgaged premises therein mentioned, wherefore they stipulated to give your orator, in the said agreement of the first day of February, one thousand eight hundred and sixty-five, his election either to take the twenty-five thousand dollars first by him advanced, with interest, or one-quarter undivided interest in said Hibernia Mine; and your orator shows that such proceedings were had in said suit for foreclosure after said decree that said mortgaged premises were sold on the twentieth day of June, one thousand eight hundred and sixty-five, for the sum of eighty-six thousand four hundred dollars, and were purchased by other parties than the said James Monroe, Thomas E. Allen, or said Morris County Bank, whereby it became impossible that your orator should have received such one-fourth interest in said property had he wished so to do.

But your orator shows that long before such sale he gave notice to said Campbell that he desired a return of the money by him loaned, with interest, as stipulated for and so elected.

And your orator shows that said Robert B. Campbell knew of said sale; that he was present at it, and was therefore well acquainted with the amount for which said land was sold, and knew to whom the price thereof would be paid; that under the agreement and arrangement between your orator and said Campbell, herein set forth, and by law and

in equity, by reason of his being trustee for your orator of said assignment of said mortgages, it was his duty immediately on receiving such assignment to him to place the same, and also the assignment made by the Morris County Bank to said James Monroe, on record in the office of the clerk of the county of Morris, in New Jersey, which by the law of New Jersey would have been constructive notice to all persons of said assignment; that it was further his duty to have given actual notice to the solicitor of the complainant in said suit of foreclosure of the assignments by the Morris County Bank to said Monroe, and by said Monroe to himself, the said Campbell, as trustee for your orator; that afterwards, and when the said mortgaged premises were sold, it was still more his duty to give such notice to said solicitor, and also to the master in chancery by whom, under the direction of said court, the sale of said mortgaged premises was made.

Yet your orator shows that said Campbell neglected his said duty in all the respects above mentioned, to the great loss of your orator, as hereinafter stated.

And your orator further shows that said promissory note for four thousand five hundred dollars fell due by its terms on the day before said sale; that it was not paid, nor was it then presented by said Campbell, who had the custody thereof, at the office where the same was payable. Your orator was not informed till sometime after that it had not been paid, and when he did learn it enquired of said Campbell about it, who replied that he had overlooked it, but would see said Monroe and get the money. Your orator enquired afterwards at various times of said Campbell respecting said note, and said Campbell replied that he was trying to get the money on said note; but he did not get it, although money to pay said note and all the indebtedness to your orator had actually been raised by the sale of said mortgaged premises, and was ready subject to said Campbell's order.

And your orator shows that though thus notified of your orator's anxiety respecting this small part of said money loaned by your orator, to wit, said forty-five hundred dollars, the said Campbell took no steps to secure to your orator payment of the large sum for which, and of the securities aforesaid given to secure the same, he was trustee. The said twenty-five thousand dollars fell due on the first day of August, one thousand eight hundred and sixty-five; the said twenty thousand dollars on the eighth day of said August. The purchase-money of said mortgaged premises was paid in at different times to the solicitor for said complainant in said suit in chancery of New Jersey, during the month of July, one thousand eight hundred and sixty-five, and said Campbell knew that by the terms of sale such payment would or might be made, and he further knew the fact when it actually was made. He knew likewise of the non-payment of said note, and your orator's anxiety aforesaid, which your orator further exhibited by calling on him several times and urging his obtaining said money for which the mortgaged premises were sold. And your orator shows that on the eleventh day of July, in said year, said Campbell was informed by said solicitor that a large portion of said amount of said sale had been paid in; yet the said Campbell wholly neglected to notify said solicitor or master of his own rights, or as trustee, or of those of your orator in the premises. And the said Campbell, after such knowledge as aforesaid, actually authorized said Allen to collect said monies as president of said bank, confiding in said Allen to pay the same over to him to the amount of the debts due your orator for which said mortgages were assigned and held, of which authority given your orator

had not at the time, nor till long afterwards, any knowledge. And your orator shows that the said Allen, taking advantage of the neglect of said Campbell aforesaid, received from said solicitor in said suit in chancery, or being president of said bank as aforesaid, authorized the payment by said solicitor of debts of said bank, to the amount
11 altogether of the full sum of eighty-six thousand four hundred dollars, being the purchase-money aforesaid of said mortgaged premises; whereby your orator utterly lost all benefit from said securities or from the sale under them.

And your orator shows that he has received no part of said monies by him placed in said Campbell's hands for investment as aforesaid, excepting twenty thousand dollars, and that there is now due to him from said Campbell, by reason of the premises of principal and interest, over thirty-three thousand dollars.

And your orator further shows that he is informed and believes that the sum of five thousand dollars more was paid to said Campbell sometime in July or August, eighteen hundred and sixty-five, on account of said monies secured by said assignment, and should have been paid to your orator, but your orator has never received any part of the same.

And your orator further shows that afterwards said Campbell, with the assent of your orator, took proceedings in the supreme court of New Jersey, against said Allen, to recover the amount by him received from said solicitor; said Campbell selected counsel in New Jersey, and by his advice suit was brought in the name of your orator instead of that of said Campbell. But your orator shows that although judgment was obtained in said suit for the sum of twenty-two thousand and nine hundred and thirty-four dollars and thirty-six cents, besides costs ($22,934.36), and execution therein issued, no part of said judgment has been received; and said Allen has taken the benefit of the insolvent laws of New Jersey, where he lives, as an insolvent debtor, and, as your orator is informed and believes, no part of said money can be collected through said suit, or any execution upon the judgment therein obtained. Your orator likewise shows that said Monroe has absconded and is utterly insolvent, so that no remedy for your orator exists except against said Robert B. Campbell, as his said trustee, for negligence to receive the amount of said sale of said mortgaged premises, and for non-payment of monies received from your orator for investment as aforesaid. And your orator shows that he hath frequently and in a friendly manner applied to said Robert B. Campbell, and requested him to pay to him the said large sum of money, which through his negligence your orator has lost; and your orator well hoped he would have so done. But now so it is, may it please your honors, that the said Robert B. Campbell, combining and confederating with divers other persons unknown to your orator, but whose names when discovered your orator prays may be inserted herein as defendants, with proper and apt words to charge them, makes divers false and fraudulent pretenses, all contrary to equity and good conscience, and tending to the great injury of your orator. And among other things the said Campbell pretends that though he might have been liable to pay to your orator said unpaid balance of said monies by him delivered for investment as aforesaid, to the said Campbell, yet that by suing therefor in New Jersey, in his own name, your orator has abandoned
12 his claim against said Campbell, whereas your orator charges that such pretence is not true in law; and, further, that the said suit was so brought at the instance of counsel selected by said Camp-

bell, at his, the said Campbell's, request, and merely as a measure of expediency, in order more efficiently to use said Campbell as a witness; and that your orator did not, in fact or law, make any election by said suit, which was simply for money received by said Allen of said solicitor, and which ex æquo et bono was your orator's; nor did he in anywise lose or abandon any right to require said Campbell to respond to your orator for his negligence as his trustee.

And your orator shows that he has offered, on payment of what is due him, to assign to said Campbell his said judgment against said Allen, and all benefit to arise therefrom.

In tender consideration whereof, and forasmuch as your orator has no adequate remedy at common law, to the end therefore that the said Robert B. Campbell may answer the premises, and show, if he can, why your orator should not have the relief hereby prayed, and may, upon his oath, according to the best and utmost of his knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to each of the several interrogatories hereinafter mentioned and set forth, as by the note hereinunder written he is required to answer, that is to say:

1. Whether he did not apply to your orator for, receive from him, and lend to said James Monroe and Thomas E. Allen, or one of them, the securities and sums of money set forth in this bill, and receive for your orator, as his attorney and trustee, assignments vesting in him the title to said mortgages conveying the Hibernia Mines, also in said bill mentioned?

2. Whether said mortgages were not then in process of foreclosure, as in said bill stated, and whether the lands therein described were not afterwards sold under decree in such foreclosure, as in said bill set forth; and, if yea, for what sum?

3. Whether said Campbell was not present at such sale, and then or afterwards informed thereof; and, if afterwards, when first?

4. Whether he received the proceeds of said sale or any part thereof; if yea, when, and from whom, and how much?

5. How much of the moneys originally invested by the complainant through him as trustee, and for which said assigned mortgages were held by him as security, has been paid to the said complainant?

And that it may be decreed by this honorable court that the said Robert B. Campbell has been guilty of a breach of trust in the premises, and of negligence in the management of the trust by your orator confided to his care, in respect of the said moneys loaned to the said James Monroe, and the said mortgages assigned to secure the same; and that your orator is entitled to be paid by the said Robert B.
13 Campbell all moneys which by reason of said negligence he has failed to secure; and that it may be ascertained by an account to be taken under the direction of this honorable court how much money was by your orator placed in the hands of said Robert B. Campbell to be invested as aforesaid; and how much thereof has since been received by your orator; and how much your orator has expended in endeavoring to collect the same from Thomas E. Allen, in costs, counsel fees, and other reasonable expenses; and that the said Robert B. Campbell may be decreed to pay to your orator all such money as shall appear on such account to be yet unpaid, with interest, and the expenses incurred by your orator in prosecuting the said Thomas E. Allen as aforesaid; and that your orator may have such other and further relief in the premises as to your honors may seem agreeable to equity and good conscience:

May it please your honors, the premises considered, to grant unto your orator the most gracious writ of subpœna issuing out of this honorable court, to be directed to the said Robert B. Campbell, therein and thereby commanding him, at a certain day and place, and under a certain penalty to be therein named, to appear before your honors in this honorable court, then and there to answer the premises, and to stand to, abide by, and perform such decree as shall be made therein, and as shall be agreeable to equity and good conscience. And your orator, as in duty bound, will ever pray, &c.

MILLER, STOUTENBURGH & PECKHAM,
Solicitors for Complainant, 18 *Wall st.*

WHEELER H. PECKHAM,
Of Counsel, 18 *Wall st.*

The defendant, Robert B. Campbell, is required to answer the interrogatories numbered 1, 2, 3, 4, 5, respectively, above contained in said bill.

MILLER, STOUTENBURGH & PECKHAM,
Solicitors, of Counsel, &c.

(Endorsed:) United States circuit court, southern district of New York. In equity. Daniel Tyler, a citizen of New Jersey, v. Robert B. Campbell, a citizen of New York. Bill for relief. Miller & Peckham, solicitors, &c., 18 Wall st. Filed Oct. 19, 1868.

14 In the circuit court of the United States for the southern district of New York. In equity.

DANIEL TYLER, PLAINTIFF,
against
ROBERT B. CAMPBELL, DEFENDANT.

The answer of the defendant, Robert B. Campbell, to the bill of complaint of Daniel Tyler, complainant.

This defendant, reserving all objections to the said bill of complaint, for answer thereunto, or unto such parts thereof as are material to be answered, answering, says and respectfully shows unto the court:

That, as he admits and avers, at the dates stated in the complaint, the plaintiff resided in the county of Monmouth, in the State of New Jersey, and had become and was and yet is a citizen of that State, and this defendant then was and yet is a citizen of the State of New York, and an attorney and counsellor at law of the city and State courts of the city and State of New York, practicing as such attorney in the city of New York; but this defendant denies that he ever was or professed to be an attorney or counsellor at law of any of the courts of the State of New Jersey, and he denies that he ever undertook the business of loaning money for the plaintiff, to be secured by mortgage or otherwise in that State, or of acting in any way as a lawyer of that State, or in respect to taking or collecting mortgage or other securities on property in that State, or giving legal advice in regard thereto; and he denies that he was employed, engaged, or retained in any way by the plaintiff as a lawyer to loan his money referred to in the complaint, or to take securities therefor, and denies that he acted in such capacity in regard thereto. But he says his acquaintance with the plaintiff and his first action in the premises was not in a professional line, but socially, and

arose from the plaintiff's being a connection of the wife of the defendant; that James Monroe, in the bill of complaint named, was introduced to this defendant by Eli P. Norton, esq., a counsellor at law and an acquaintance of this defendant, some months before the first transaction referred to in the bill of complaint; that said Monroe frequented the office of said Norton, near to deponent's office, and knew this defendant, and he asked this defendant to assist him in procuring a loan for him; whereupon this defendant informed the plaintiff of said Monroe's desire to obtain a loan. That the plaintiff made some enquiries of this defendant, which he truly answered, and the plaintiff thereupon said to this defendant, in substance, "Let him present to me a written application and I will consider it."

And this defendant denies that he, the defendant, ever applied to the plaintiff to lend money, as alleged in the bill of complaint, and denies that he, this defendant, ever requested the plaintiff to make such a loan or loans as alleged, or any loan. But he says that the said James Monroe, having through this defendant obtained permission from the plaintiff to make a written application as above mentioned, he, the said James Monroe, did make such written application in his own name and behalf, and signed by him, which was in the words and figures following, namely:

"NEW YORK, *Jan.* 27, 1865.

"Proposition of James Monroe to Daniel Tyler for a loan of $30,000.

"I will place in the hands of Robert B. Campbell a certain mortgage given by T. T. Wood and wife to the Morris County Bank, for the sum of $97,000, and a certain lease of the Hibernia Mines (the fee of which is covered by said mortgage) made between T. T. Wood and the Trenton Iron Company, and by said Wood assigned to the Morris County Bank, as collateral security for the payment of the above-mentioned sum.

"It is agreed that upon the said Daniel Tyler loaning the said sum of money he shall have the right within six months from the time of making such loan to elect whether he will, at the expiration of said six months (or before then if the title of the land is procured by me), take one-quarter interest in said lease and the land over which the same extends, and 300 shares of the capital stock of said Morris County Bank (shares $50 each par value), or else $25,000 in money, with interest thereon, and said 300 shares of stock, in payment of such loan; and I also agree to buy the said 300 shares of stock for the sum of $40,000 on the expiration of six months from making the said loan, if the said Tyler shall desire to sell the same for such price.

(Signed) "JAMES MONROE."

And this deponent admits and says that he did, at the request of the said James Monroe, forward or deliver to the plaintiff the said written application, a copy of which is above set forth, at or about the day of its date; and that in answer to inquiries made by the plaintiff, and acting for and at the request and on behalf of the said James Monroe, and not otherwise, this defendant informed the plaintiff of what he had heard the said James Monroe say in explanation of the said application, and this defendant says that he did not profess to the plaintiff to have or possess any knowledge of his own on the subject, and carefully gave to the plaintiff his authority and the source of

his information on each topic. And he, this defendant, denies that he made to the plaintiff any or either of the representations stated in the complaint; and denies that he did more or otherwise than truly communicate to the plaintiff what he had heard the said James Monroe and others say, carefully disclaiming any knowledge of his own.

This defendant further says that on or before the 29th day of January, 1865, the plaintiff had made investigations and enquiries on the subject of the said written application, and had ascertained, been informed, or knew that Thomas E. Allen, named in the complaint, was president of the Morris County Bank of Morristown, in the said State of New Jersey, and that such bank was a corporation existing by the laws of the said State of New Jersey, and authorized to issue bills and notes and do a banking business in that State; that it had previously, and before the year 1862, received deposits and issued bank-notes for circulation, and which had circulated in the said State of New Jersey, but that its circulation had been stopped, discredited, or driven in about the time of the breaking out of the civil war, and that said bank was then in process of collecting certain debts and assets belonging to it (including a large amount secured by mortgage), and paying its obligations, and had its board of directors as well as president, cashier, and attorney, but was not then in active operation as a bank of deposit or issue or circulation; that the said James Monroe was a stockholder of said bank and claimed to be a large stockholder, and the said Thomas E. Allen was also a stockholder, the two having much control in the management of the affairs of said bank, and that they expected the said bank would soon be able and ready to pay all its debts, and have a capital or surplus beyond the same (depending much upon its success in realizing funds from the large mortgage securities above alluded to and hereinafter mentioned), and that the said James Monroe and Thomas E. Allen then contemplated that the said bank would resume active business, and would become a national bank, and its stock be valuable, although then much depressed. All which this defendant was then informed and believes was true. And this defendant, on information and belief, says that the plaintiff, on or before the 29th day of January, 1865, had ascertained or knew that the said Thomas E. Allen was a party interested in some way with the said James Monroe in obtaining the loan desired by the said written proposition or in the manner of its use, and that some application had been made for such a loan in the city of Newark, and this defendant says that after such written proposition had been received and considered by the plaintiff, he, the plaintiff, on the said 29th day of January, 1865, wrote and sent a note to this defendant on the subject, asking whether the said James "Monroe's party had secured the loan in Newark," referring to matters hereinbefore detailed.

17 This defendant, further answering, says that the plaintiff, after taking such time as he thought proper in order to make enquiries and ascertain facts, on the 30th of January, 1865, wrote back to the said James Monroe a written answer to the said written proposition (not accepting the same unless its terms were varied), which written answer was in the words and figures following, viz:

"NEW YORK, *30th Jan'y*, '65.

"JAMES MONROE, Esq., *New York City:*

"SIR: I am confined to my room to-day from, as I hope, temporary illness. I will accept your proposition of the 27th inst., substantially

as made, with this exception, that instead of thirty thousand (30,000) dollars I will hand over to you twenty-five thousand (25,000) dollars of United States 5-20 coupon bonds, with all the undue coupons attached, which I consider in value full thirty thousand (30,000) dollars. If this offer is accepted I shall consider you chargeable with expense of the papers and all other incidental expenses. I shall also expect Mr. Campbell will investigate the title so far as he may deem necessary, and also that he will put the agreement in form.

(Signed) "DANIEL TYLER."

And this defendant denies that he agreed to act as trustee for the plaintiff, to receive an assignment of such bonds and mortgages and lease, or either of them, and to protect the plaintiff's interest in regard to the loan or proposed loan or advance and the securities therefor, or to do everything or anything necessary or proper to provide for the safety of the plaintiff's investment or transaction, or to secure the repayment of the money, or generally to act to the best of his skill and understanding to protect the plaintiff from loss in the premises. And he denies any consideration or inducement from the plaintiff to undertake such duties.

This defendant further denies that at the time alleged, or at any time, the plaintiff delivered to him bonds of the United States that he might raise the sum of twenty-five thousand dollars, or any other sum.

The defendant further says that after the said written proposition and modified acceptance it was claimed by or on the part of the said James Monroe that the amount or sum therein expressed was insufficient for his purposes; and this defendant is informed and believes that the said James Monroe conferred with the said Thomas E. Allen, being president of the said bank, in reference to the transfer and assignment of the said mortgages and lease to secure the plaintiff; and that the said Thomas E. Allen, by written note addressed to the said James Monroe, on the 3d February, 1865, protested against using the said lease or mortgage for a less sum than $50,000, and informed him that if he (meaning probably as president of said bank and for the use of the corporation) could not have that amount, then a sale under the said mortgages would be urged and the debts of the said bank be paid
18 in that way. Whereupon the said James Monroe caused said note of 3d February to be shown to this defendant and to the complainant, and before any money or bonds had been paid or advanced by the plaintiff under or in pursuance of the said written proposition and acceptance the said James Monroe, directly or indirectly, made an application to the plaintiff for the loan or advance of the further sum of twenty thousand dollars; and on or about the eighth day of February, 1865, the plaintiff wrote to this defendant a letter or note in the words and figures following:

"NEW YORK, *Feb'y 8th*, 1865.

ROBERT B. CAMPBELL, Esq., *Wall St., N. Y.*:

"MY DEAR SIR: As to furnishing Mr. Monroe and Mr. Allen twenty thousand (20,000) dollars for six months on the joint and several note secured by the mortgages, I will agree to deliver them eighteen thousand (18,000) dollars of 5-20s coupon bonds, and receive therefrom the notes as above for twenty thousand (20,000) dollars and one hundred and fifty (150) shares in the capital stock of the Morris County Bank, the shares to be put into your hands as trustee.

(Signed) "DANIEL TYLER."

And in reference both to the last-mentioned letter signed by the plaintiff and the previous letter to the said James Monroe signed by the plaintiff and sent in answer to the written proposition before mentioned, the said James Monroe and Thomas E. Allen (being shown the last-mentioned note) did thereupon address and send to the plaintiff on the same day a joint letter, in the words and figures following:

"NEW YORK, *Feb'y* 8, 1865.

"GEN. TYLER:

"DEAR SIR: Your note of Jan. ult., directed to the undersigned James Monroe, and your note of this date directed to Robert B. Campbell, esq., have been received. We hereby accept the terms stated in said communications, the proposition of Jan. ult. being accepted as of Feb'y 1, 1865.

"Yours, respectfully,
(Signed) "THOMAS E. ALLEN.
"JAMES MONROE."

And this last acceptance, as the defendant was informed and believes, became the basis of proceeding to or towards the completion of the transaction between the said parties.

And this defendant avers that the plaintiff was well aware of the peculiar character of the said arrangement, and that he was contracting and dealing with stockholders of the said bank, in part for their own interest as individuals, but seeking or professing to revive and restore said bank, and was to receive from them stock of the said bank or a large bonus, while he was also to be secured by an assignment of mortgages and a lease held by the said bank owing or standing debts, which would be valuable and available as securities in case the money
19 was duly paid over therefor to the said bank or to its creditors for its use, or so far as the said Monroe had just title to such securities or should perfect a title thereto.

And this defendant avers and insists that the plaintiff, in view of the probable great profits of such a transaction, if successful as it then promised to be, was willing to and did assume the risks thereof, and wished only the use of this defendant's name and friendly assistance, expecting this defendant to charge to the said James Monroe or to others and receive from them whatever compensation he should charge or receive for his acts, care, or attention and services in the premises, and not at all engaging or compensating or agreeing to compensate this defendant for any service.

And this defendant, further answering, says that after the last-mentioned joint letter was received the more formal papers were executed, with the view of carrying into effect the last-mentioned letter and plan; that the said James Monroe thereupon made and executed, under his hand and seal, the agreement in writing with the plaintiff, dated the first day of February, 1865, a copy of which is set forth in the complaint (from folios 10 to 17), and also at the same time made and executed, under his hand and seal, the further agreement in writing with the plaintiff of the same date, a copy of which is contained in the schedule hereto annexed, marked Schedule No. 1, and made part of this answer; and also at the same time made and executed, under his hand and seal, the other and further agreement in writing with the plaintiff, dated the eighth day February, 1865, a copy of which is contained in the schedule hereto annexed marked Schedule No. 2, and made part of this answer. And the said James Monroe and Thomas E. Allen also

at the same time signed and delivered their joint and several note to the plaintiff, dated 8th February, 1865, a copy of which is hereto annexed in a schedule marked No. 3, and made part of this answer.

That thereupon the said Morris County Bank of Morristown, in the State of New Jersey, by the said Thomas E. Allen, as its president, under its seal (but as it afterwards appeared without the active aid and probably without the concurrence of the attorney of the said bank), executed in due form to the said James Monroe an assignment of the said two mortgages and lease, dated the 11th day of February, 1865, expressing therein a consideration of fifty thousand dollars, and conditioned to be void upon the payment of that sum by the said bank on the 11th day of June then next, with interest at the rate of six per cent. per annum, a copy whereof, or of the substance of the same, is hereto annexed in a schedule marked No. 4, and made part of this answer.

And the said James Monroe also made and executed, under his hand and seal, an assignment of the said two mortgages to this defendant, dated the same 11th day of February, 1865, a copy of which assignment is contained in the schedule hereto annexed, marked Schedule No. 5, and made part of this answer.

And thereupon, and not otherwise, the said James Monroe, together with the plaintiff and this defendant, made and executed the special agreement dated the same 11th day of February, 1865, a copy of which is set out in the said bill of complaint (from fol. 21 to 28), and to the original of which he begs leave to refer.

That the complainant, having examined the said papers, and being satisfied with the same and the security thereby afforded to him, or professed so to be, on the 13th day of February, 1865, handed to this defendant forty-three bonds of the United States of America for one-thousand dollars each (called 5-20 coupon bonds), with the coupons thereto annexed for the interest not then past due, and requested or directed this defendant to deliver the same to the said James Monroe on the delivery by said Monroe to this defendant, for the plaintiff, of the said executed papers marked Schedules 1, 2, 3, and 5, and the two executed papers above referred to which are set forth in the bill of complaint (from folios 10 to 17 and from folios 21 to 28), and upon the delivery also of certificates for 450 shares of the capital stock of the said Morris County Bank) with transfers or power to transfer the same. And that in compliance with the directions of the plaintiff this defendant did, on the next day, the 14th of February, on receiving from the said James Monroe the said six executed papers last above described, and the certificates for 450 shares of the capital stock of the said bank, with transfers or power to transfer the same to the plaintiff, duly deliver to the said James Monroe the said forty-three bonds called 5-20 coupon bonds, in the presence of said Allen, and such 5-20 bonds were passed in deponent's presence by said Monroe to the said Allen, as president of said bank, and this defendant did shortly thereafter deliver or send to the plaintiff all of the said executed papers except the assignment of the mortgages, and did send to him also the said certificate of stock, with transfers or power to transfer the same, and plaintiff accepted and received the same in discharge of this defendant in respect to that transaction, and assumed and thereafter had the whole charge, custody, control, and management thereof.

And this defendant avers that the above mentioned were all the United States bonds ever delivered by the plaintiff to this defendant, and that the same were delivered to him with special instructions to deliver the same to the said James Monroe, as hereinabove stated.

And that this defendant did so deliver the same, and performed his whole duty and trust in regard thereto.

And this defendant denies that on the eighth day of February, 1865, or at any other time, the plaintiff delivered to the defendant, at the request of the defendant, or as the trustee of the plaintiff, any bonds of the United States whatsoever, or any to be delivered to the said Thomas E. Allen, or any to be sold to produce a certain sum, or any to be in any way managed at will or at discretion of this defendant.

This defendant, further answering, says that the complainant himself negotiated and agreed with the said James Monroe as
21 to what amount in money or bonds he would let the said James Monroe have, and as to the terms and conditions upon which he would let him have the same, nor did he take the advice of this defendant upon the subject. That by the last-mentioned written proposal and acceptance for $20,000 (which this defendant did not negotiate) the plaintiff made the whole his own, and materially changed and interfered with the preceding first arrangement, which had of itself without this change practically failed or could not be proceeded with.

And this defendant further says that he, this defendant, did not dispose of the said forty-three coupon bonds, nor of any of them, nor receive the proceeds of the same, or of any of them, nor did he at the time know in what manner, for what price, or when they were disposed of by the said James Monroe and Thomas E. Allen, or by either of them, although he has been since informed and believes that they were so disposed of by said Allen, and on the same day, or without delay, he, said Allen, receiving a broker's check therefor to his order, which check he endorsed and delivered to the said Monroe, who deposited the same in bank and collected the amount and divided the proceeds in some way with said Allen. And he says that on the fourteenth day of February, 1865, the said forty-three 5-20 coupon bonds of the United States, with the coupons attached and interest accrued, were worth in the New York market, in the legal-tender currency of the United States, about nine or ten per cent. above par, and about the sum of forty-seven thousand three hundred dollars, and no more; and that such legal-tender currency at that period (being before the end of the war), compared with gold and silver and other values, was so depreciated by the extraordinary situation of public affairs that the said forty-three bonds could have been purchased in the New York market for very much less than their face in gold.

This defendant, further answering, says that neither the said Morris County Bank nor the said president thereof did actually deliver the said mortgages, or either of them, nor any mortgage, to this defendant, nor, as he is informed and believes, to the said James Monroe there being only a technical delivery by means of such assignments. That the said two mortgages (called and treated in common parlance as if but one) were, as this defendant is informed and believes, before and at the time of executing and delivering the said assignments thereof, in process of foreclosure by a suit or suits in the name of the said bank, as plaintiff or complainant, commenced in the year 1862, in the court of chancery of the State of New Jersey, and this was known to the complainant, and such foreclosure suit or suits was or were under the charge of and prosecuted by Samuel S. Halsey, esquire, as attorney or solicitor for the said bank; and it was contemplated and desired by all the said parties, including the plaintiff, after the said assignments of the mortgages executed and delivered as aforesaid, that the said suit or suits should proceed in the name of the said bank, and under

22 the charge or care of its said attorney (he being deemed responsible and competent), and that a decree or decrees of foreclosure and sale of the mortgaged premises should be obtained and had, and that the said mortgaged premises should be sold under such decree or decrees of sale; that the said Monroe and Allen, by the aid or by means of the said coupon bonds or funds provided by the plaintiff or otherwise, should prevent any sacrifice at such sale which might otherwise arise by reason of the premises (then deemed of great value) being sold to strangers at a low price, or by reason of any proceedings of creditors of the said bank, and if the said James Monroe should become a purchaser at such sale then the said Monroe should, at the complainant's election, allow him to come in as a copurchaser, as contemplated by the said agreements.

And this defendant, on information and belief, says that, in accordance with such contemplation and desire, the said suit or suits was or were proceeded with in the name of the said bank, and under the charge and care of the said attorney or solicitor of the said bank, and a decree or decrees of sale having been obtained (but when in particular the defendant is not informed), the said mortgaged premises were afterwards sold under and by virtue of such decree or decrees, by or under the direction of a master of the said court of chancery of the State of New Jersey, and were advantageously sold in various lots or parcels, without the said James Monroe's becoming a purchaser at such sale of any part thereof in his own name, to the knowledge, information, or belief of this defendant. That one or more parcels (to prevent a sacrifice) were bid in by or in the name of the said bank, for the sum of two thousand five hundred and fifty-seven $\frac{50}{100}$ dollars or thereabouts, and were conveyed by the said master of the court to the said bank (the plaintiff in the suit) in part payment of the amount due on such mortgages, and without any purchase-money being actually paid therefor, as this defendant is informed and believes. But that other parcels were struck off and sold at such foreclosure sale to strangers, producing a large sum of money under and by reason of such foreclosure sale, and that the immediate care and receipt of the funds arising from such sale from the officers of the said court under said decree, after paying costs and expenses, fell to the said Allen, as president of said bank, and to the said Samuel S. Halsey, as attorney or solicitor nominally for the said bank. And that although the said mortgages had been assigned to secure the plaintiff as aforesaid, such assignments did not appear and were not noticed in such foreclosure proceedings; nor was it necessary that they should, or in accordance with the forms of proceedings used in the said State of New Jersey, such assignments having been executed, and by way of security for a less sum than was claimed to be due on said mortgages, long after the said foreclosure suit or suits had been commenced.

This defendant, further answering, says that he had reason to believe and did believe that the said attorney or solicitor, acting for and
23 in the name of the said bank, had notice of the said assignments made by the said bank and by said Monroe of and for such mortgages so foreclosed. And this defendant denies that there was any duty or obligation to the plaintiff imposed upon this defendant to give notice of such assignments to the said attorney, and he denies also that it was material, necessary, or important to give said attorney any such notice. And this defendant denies that he, this defendant, contemplated buy-

ing the property under said foreclosure decree, or any part thereof, either alone or in company with others, or with any one.

And this defendant denies that on or about the seventeenth day of April, 1865, or at any time, this defendant applied to the complainant for a further sum of $4,500, or for any sum, for the use of the said Monroe and the said Allen, or either of them, or for any other person, and he denies that he was interested in any such application, or that any was made for his use. But he admits and says that on or about the last-mentioned day the complainant, having received some application from said Monroe, sent to this defendant a check for the sum of $4,500, with instructions to deliver the same to the said Monroe, on his delivering to this defendant, for the plaintiff, a certificate for one hundred shares of the capital stock of the said bank, and such a promissory note and letter as are set forth in the bill of complaint (from folios 30 to 33). And this defendant says that the complainant himself negotiated with the said Monroe in reference to the last-mentioned transaction, and until the receipt of such instructions this defendant had no knowledge or information that the complainant intended or proposed to loan or advance or had agreed to loan or advance that sum, or any further sum, to the said Monroe, nor had this defendant applied to or requested him in any way so to do, nor was this defendant charged with any duty or responsibility to the plaintiff in reference to the last-mentioned matter, except the receipt of said note, agreement, and certificate of stock before parting with such check, as he did do.

And this defendant denies that sums of money, amounting to $49,500 or any other sum, were or was placed in the hands of this defendant as a trustee for the complainant, as alleged in the bill of complaint.

And he says that the only property placed temporarily or at all in the hands of this defendant by the complainant, or received by the defendant from him, was the above-mentioned bonds and check, which this defendant was directed by the complainant to deliver to the said Monroe as above mentioned, and over which this defendant had no authority or power, and that he delivered the same accordingly.

And this defendant denies that any duty or responsibility devolved upon or was assumed by this defendant on receiving the assignment or assignments of the said mortgages, or either of them, to place the same on record or to take any active part in relation thereto. And he says that if the complainant had desired or expected the said assign-
24 ments to be recorded, or any notice to be given thereof, or act to be done by this defendant, this defendant, upon being requested, and upon having the bare expense thereof assured to him, was all the time ready and willing to comply with such request, but no such request nor intimation was then made, and, on information and belief, this defendant says that the complainant did not then desire any such recording to be had, nor any such notice to be given, nor was it deemed necessary; but himself confided in and conferred and arranged and advised with the said Monroe and Allen, or one of them, as to the course to be pursued in reference to the said foreclosure and sale and the whole business.

And this defendant says that before the sale under the foreclosure of the said mortgages this defendant did give actual notice to the said Samuel S. Halsey of this defendant's holding the said assignment of the said mortgages and of his claiming the proceeds by reason and means thereof. And the said bank, for which the said Halsey acted merely as attorney or solicitor, had full notice thereof. And although it has since been claimed by or on the part of some of the creditors and

some of the directors of the said bank, or by said attorney, that engagements or arrangements were or had been made or entered into prior to such assignments or before notice thereof, which required a considerable portion of the proceeds of such foreclosure sale to be applied to or towards the payment of the debts of the said bank, this defendant denies that the plaintiff's security was or would be seriously impaired by such application of a large part of the money, and he says that the said bank by the payment of its debts was expected to be able to respond to the complainant, and in proportion or as fast as such debts were paid the security and prospects of all the said parties were improved. And this defendant says he was not then advised of the effect which would have resulted from the taking of such proceeds by this defendant for the plaintiff under such assignment leaving such debts unpaid, and he was not indemnified by the plaintiff nor instructed to take any action whatever, and he submits that he ought not to be held in any way responsible for any omission to act in the premises. And he says he did repeatedly demand payment of the said proceeds to him for the plaintiff. And he denies that it was his duty in the premises to do or perform any act or acts that he has not done, or which in the bill of complaint it is claimed he should have done or performed. And he says he had no satisfactory authority and was under no duty to demand payment of the said note for $4,500, nor to receive it even if tendered to him, while said note was left and remained in his hands. That such note and the certificate for one hundred shares of stock, with a transfer or power to transfer the same, were subsequently sent to the complainant, as soon as demanded or requested by him. And this defendant says that the said Allen did not in fact receive any part of the proceeds of said mortgages under or by reason of any authority received from this defendant, unless and except as authorized by the complainant.

25 And he denies that there is due to the complainant from this defendant any sum or sums whatever. And he denies that the sum of five thousand dollars or any sum whatever was paid to this defendant, on account of the indebtedness of the said James Monroe to the complainant, in the months of July or August, 1865, or at any other time, or any sum except the next following. And he says that on or about the said eighth day of August, 1865, the said Thomas E. Allen handed to this defendant, for the complainant, a check for the sum of twenty thousand dollars (professing that it was his own money), and directing it to be applied to or towards the payment of the said joint and several note hereinbefore mentioned, dated 8th February, 1865, upon which the said Allen was responsible, and in discharge of the said agreement signed by him, dated 8th February, 1865, copies of which note and agreement are contained in Schedules No. 2 and No. 3, and made part of this answer. And this defendant thereupon at once passed over and delivered the said check to the complainant, and the complainant received the money for the same, to wit, the sum of twenty thousand dollars, lawful money of the United States of America, on or about the said eighth day of August, 1865, which was then of much greater value than on the fourteenth day of February previous, and thereupon the complainant, or this defendant, for him and by his authority, surrendered up to the said Allen to be cancelled, or cancelled the said note and agreement dated 8th February, 1865, copies of which are contained in said Schedules No. 2 and No. 3. And this defendant, on information and belief, says that the said Thomas E. Allen, being president of the said bank, had, before the said eighth day of August, 1865, had some difference with the said James Monroe; that a very

great change had occurred in the pecuniary condition and prospects of the country in values upon the termination of the civil war; that an attempt had been made to organize the said Morris County Bank as a national banking association, which had not been completed, and finally was not successful; and whatever the transactions between the said Monroe and Allen had been (in buying up the stock of said bank or otherwise), the latter had not caused to be credited on the books of the said bank, or accounted for to the said bank or its other officers, a proper and full consideration for the assignment of the said mortgages by the said bank to the said Monroe, so that the title of the said Monroe to hold the said mortgages as a security by virtue of such assignment to him, and consequently the title of this defendant as his assignee, was exposed to difficulty and controversy in New Jersey, and was not capable of ready enforcement in that State in opposition to the creditors of the said bank. But to the extent of the twenty thousand dollars so paid over by the said Allen, and received by the complainant as above stated, this defendant believes such assignments were valid, and the said twenty thousand dollars so paid to the complainant, as this defendant believes, in fact came from the proceeds of the said foreclosure sale received by
26 the said Allen, he being president of the said bank, and the foreclosure proceedings having been continued in the name of the said bank as aforesaid; and other parts of such proceeds of the foreclosure sale were, as this defendant was informed and believes, paid out, not to the said Monroe nor to this defendant, but to or towards the payment of the outstanding debts and obligations of the said bank, and so as to aid it in resuming business.

This deponent, further answering, says that at or about the time when such payment of only twenty thousand dollars was made the complainant had negotiations with the said Monroe and Allen, and caused inquiries to be promptly made, and he ascertained generally the situation of affairs, and he was then at liberty to direct or sanction proceedings in any form which should be judged expedient; and this defendant, then and at all times, was ready and willing to assist him, and to take any course deemed judicious and proper in the premises. And that it was deemed, both by the complainant and by this defendant, and it was expedient and necessary, that the complainant should employ counsel in the State of New Jersey and follow his advice. And thereupon the complainant did employ Theodore Little, esq., of Morristown, in the State of New Jersey, as his attorney and counsel in that State in reference to this business, after causing enquiries to be made respecting him. That this defendant, at the request of the complainant, and in his behalf, did make enquiries respecting said Little (before unknown to him), and did obtain satisfactory recommendations of him as a proper, competent, and independent counsel for the complainant, and also at the request of the complainant this defendant did confer and advise with said counsel, acting for and in the interest of the plaintiff, and did truly inform him of all the material facts and circumstances within his knowledge, and did submit all the material papers and letters to him. And the complainant did also in person confer and advise with the said Theodore Little, and thereafter such proceedings as were had and taken in that State were under the advice and direction of said Theodore Little, acting for and in the interest of the complainant, and for the same or their results this defendant ought in no way to be held responsible.

This defendant further shows that at this period there was an important election of remedies to be had at the choice of the complainant,

and especially an election either to proceed and keep upon friendly terms with said Allen or in decided antagonism and hostility to him, and either to proceed against the said Morris County Bank or against the said Allen individually in respect to the money or funds realized from the said foreclosure sale or from said coupon bonds, and the complainant was informed thereof and was advised by the said counsel that he could recover his claim, or a large part thereof, by a suit or proceedings against the said Morris County Bank, and that a suit therefor might and ought to be brought in his own name, and not in the name of this defendant. That by this time the complainant had become and was a large stock-
27 holder of the said bank, and by note in writing to this defendant he had said, "It is my interest to have the bank fairly started, and I am willing to stretch a point to do this;" and after consultation with his said counsel the complainant determined not to proceed against the said bank, but against the said Allen and the said Monroe individually, and thereby check them both from obtaining or holding the control of the said bank until they settled with him; that the name and attendance of this defendant for the purpose of any such suit were at his service; but the said counsel advised and the complainant adopted the plan of suit in his own name; and that a hostile action at law was accordingly commenced and prosecuted by and in the name of the plaintiff against the said Allen in the supreme court of the State of New Jersey, in which the complainant made an affidavit on or about the twentieth of November, 1865, in order to obtain the arrest of the said Allen, and thereupon proceeded and acted in antagonism and opposition to said Allen; and such proceedings were thereupon had that on a trial at the Morris County circuit, at the May term of the year 1867, complainant obtained a verdict against the said Allen for $22,934.36 as and for the proceeds of the said coupon bonds, or of said foreclosure suits, received by said Allen, for which he was accountable to plaintiff; upon which verdict, after argument upon a case made, and after much litigation and controversy, judgment was long afterwards rendered against the said Allen in favor of the complainant, with costs, which judgment so due defendant is informed and believes remains in full force.

And this defendant submits and insists that such prosecution of the said Allen individually by the plaintiff as aforesaid was inconsistent with the present action, and was an election of the complainant not to proceed against nor prosecute the said bank nor this defendant; and that at any rate the complainant ought to allow as a credit what he would gain or did gain as a stockholder of said bank, by reason of not proceeding to enforce his claims against the said bank, instead of against the said Allen individually; that both the said Monroe and the said Allen strove to get a majority of the stock of said bank, and to have the control of said bank; that the said Monroe having failed of success, or having no prospect thereof, except by the aid of complainant, and admitting his responsibility to the plaintiff by written order addressed to the said Allen, requested him to transfer to this defendant (thereby to aid in securing the plaintiff) all of the stock of the said bank in which the said Monroe was interested (he having held or claimed at one time about 1,353 shares, and having entered into some arrangement with said Allen to purchase shares, who held or claimed about 600 shares); but the said Allen, making allegations adverse to the said Monroe, refused to make or permit any such transfer before the said action at law was commenced against him; that although the commencement of such action may have been a politic course, in order

to induce or compel the said Allen to aid in a proper adjustment
28 and settlement of the plaintiff's demands, yet when he was willing, and offered soon after the said action at law was commenced (as he did), to aid in an adjustment and settlement of the plaintiff's demands, the plaintiff refused to accede to such terms as said Allen proposed and probably could have performed; and he is informed and believes other offers of settlement were made to the complainant which he did not communicate to this defendant; and the plaintiff, having willfully refused all such offers, ought to bear all the losses consequent upon such refusal, including the effect upon the said bank and upon the ability and disposition of said Allen or his friends to aid in the premises.

This defendant, further answering, says that the plaintiff, in pursuit of his own plans and policy, caused and directed two actions at law to be commenced against the said Monroe in the supreme court of the State of New York, one based upon the first-mentioned agreement or transaction of 1st February, 1865, set forth in the complaint, and the other based upon the last loan or transaction of the plaintiff to and with the said Monroe for $4,500; and that the complaints in such actions having been verified by the plaintiff on oath, such proceedings were thereupon had that the plaintiff recovered judgment against the said Monroe in both of the said actions at law on the 22d day of November, 1865, in the first for the sum of $26,303.34 of principal, interest, and costs, and on the second action for the sum of $4,701.88 of principal, interest, and costs, which judgments, as this defendant believes, remain in full force; and this defendant submits and insists that the election of the complainant to prosecute such actions and obtain such judgments ought to bar and preclude him from having or maintaining the present suit against this defendant for the same claim or sums.

And this defendant, further answering, on information and belief says that, as he apprehends, the complainant's loss, so far as said assignment of mortgages failed him, arose from the failure of the said Monroe and Allen (one or both) to pay to the said bank a full and fair consideration or value for the said assignment of the said mortgages executed by or for the said bank to the said Monroe, and from their failure also and the bank's failure to pay and settle as promptly and fully as should have been done the outstanding debts and claims against the said bank, so that by reason of such failure of consideration the assignment of the said mortgages to the said Monroe, executed on the part of the bank by the said Allen as its president, in due form, under the corporate seal of the bank, and the assignment of the same to this defendant, although in due and legal form, failed, for want of proper consideration, to give a complete and defensible title in New Jersey to the said mortgages or to the proceeds thereof, at least as against creditors of said bank; and this defendant denies that he was in any degree or manner responsible for this failure or this result. On the contrary, as
this defendant is informed and believes, the said Monroe and
29 Allen, upon whom the complainant relied, employed the funds received by them in efforts to buy up the stock of the said bank, and in other speculative ways, some of which failed; and the complainant, by his transactions in respect to such bank stock and otherwise, in seeking great profits far above legal interest, gave countenance to this course of theirs (taking the risk upon himself), and ought not to complain of any act or omission to act of this defendant, whose name and services were simply used for convenience; and this defendant says that he acted throughout in entire good faith, with and for the

complainant, and according to his best judgment of what was proper and right to be done by him in the premises; but that the complainant has not paid him nor tendered payment for services, nor tendered him indemnity for any suit or action by him; and he submits that he was not under legal obligation to incur risks or expense for him by any action or proceeding in the said State of New Jersey.

And this deponent, for a more pointed and exact answer to the several interrogatories set forth in the bill of complaint, and thereby required to be answered, says:

1. That he did not apply to the complainant for, nor receive from him, nor lend to the said James Monroe and Thomas E. Allen, nor to either of them, the securities and sums of money set forth in the complaint, or either of them. And that he did not receive, as his attorney and trustee, assignments vesting in him the title to said mortgages covering the Hibernia Mine, also in said bill mentioned. But he admits that he did receive an assignment of bonds and mortgages, a copy of which is annexed to this answer in Schedule No. 5, and did execute the paper in regard thereto dated 11th February, 1865, a copy of which is set forth in the complaint (fol. 21 to 28).

2 & 3. That said mortgages were then in process of foreclosure, but as to the particulars thereof, and whether precisely as in said bill stated, this defendant was then and is yet ignorant. That the lands therein described, or a large portion thereof, were or was afterwards sold under a decree in such foreclosure suit or suits, and for more than the amount due or secured to the complainant, but as to the particulars thereof, and whether as in said bill set forth, or for what sum, this defendant has not personal knowledge, nor sufficient information to state the same with accuracy and in detail. That this defendant was present at an auction sale which took place under said decree, on the twentieth day of June, 1865, but not at any subsequent sale, and he heard certain premises knocked down by the master in chancery, to different purchasers, for sums which, according to his best recollection, amounted to about $86,400; that such sales were to be completed by the payment of the purchase-money to his said master in chancery, and delivery of deeds, at a subsequent day (about a month afterwards), when this defendant was not present; and such sale was adjourned to the 11th day of July, 1865, but on that day no further sales were made, according to the defendant's information and belief, but such sale was further adjourned until some day in the month of September then next; and he does not know whether or not the whole of the mortgaged premises were sold, nor whether any other or further sales were made or not, but he has been informed and believes that there were subsequently further sales made.

4. That this defendant never received the proceeds of such sale, or any part thereof, unless and except only the sum of $20,000 from the said Allen, which he paid over to the plaintiff as hereinbefore stated.

5. This defendant denies that any moneys whatever were invested by the complainant through this defendant as trustee, or any for which assigned mortgages were held by this defendant as security. But in respect to the transactions in the complaint, or hereinbefore referred to, this defendant has knowledge of the payment of the said sum of twenty thousand dollars to the complaiannt as before mentioned, and of the transfer to him of 550 shares of the capital stock of the said Morris County Bank, of the par value of $27,500, also hereinbefore mentioned, on account of such transactions, and of no other actual payment.

All which matters and things this defendant is ready to aver, main-

tain, and prove as this honorable court shall direct; and humbly prays to be hence dismissed with his costs and charges in this behalf sustained.

ROBT. B. CAMPBELL.

C. A. HAND, *Att'y for Def't.*
CHARLES B. MOORE, *of Counsel.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The defendant, Robert B. Campbell, was on this twenty-fifth day of January, 1869, duly sworn before me that he had read the foregoing answer, or heard it read, and knew the contents thereof; and that the same was true of his own knowledge, except as to the matters therein stated on his information and belief, and as to those matters he believed the same to be true.

J. BUCHANAN HENRY,
United States Commissioner, Southern District of New York.

Schedule No. 1, referred to in the foregoing answer.

[U. S. rev. stamp, 5 cts., cancelled.]

In consideration of the sum of one dollar to me in hand paid by Daniel Tyler, I, James Monroe, of the city of New York, do hereby covenant and agree that I will purchase of the said Daniel Tyler three hundred shares of the capital stock of the Morris County Bank of Morristown, New Jersey, for the price or sum of ten thousand dollars in cash, 31 provided that said Daniel Tyler shall give me notice of his desire to sell the same for that price between the twentieth day of July and the first day of September next, and that I will pay the said sum therefor, on receipt of the certificates for such stock, within ten days after the giving of such notice.

Witness my hand and seal this first day of February, one thousand eight hundred and sixty-five.

JAMES MONROE. [L. S.]

Signed, sealed, and delivered in presence of—
E. P. NORTON.

Schedule No. 2, referred to in the foregoing answer.

[U. S. rev. stamp, 5 cts., cancelled.]

This agreement, made this eighth day of February, one thousand eight hundred and sixty-five, between James Monroe, of the city of New York, party of the first part, and Daniel Tyler, of the same place, party of the second part, witnesseth: That whereas the said party of the first part is indebted to the said party of the second part in the sum of twenty thousand dollars, payable on the day of August next, for which the said party of the second part hold the joint and several note of the said party of the first part and Thomas E. Allen: Now, therefore, the said party of the first part, in consideration of the sum of one dollar to him in hand paid, hereby agrees that he will, within thirty days from the date hereof, assign and convey to the said party of the second part, or to such person as he may designate for that purpose, two certain bonds and mortgages made by Theodore T. Wood to the Morris County Bank, one thereof dated June 6, 1856, to s cure the sum of one hundred thousand dollars, and the other thereof

dated October 8th, 1857, to secure the sum of seventy-five thousand dollars; and also a certain mining lease made and executed by and between the said Theodore T. Wood and the Trenton Iron Company, dated April 1, 1861, to be held as collateral security for the due and punctual payment of said indebtedness.

And the said party of the first part reserves to himself the right to collect and retain all rent that may accrue on the said lease prior to the said first day of August next.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

JAMES MONROE. [L. S.]
[L. S.]

Signed, sealed, and delivered in presence of—
E. P. NORTON.

Paid and discharged Aug. 8, 1865.

R. B. C.

32 *Schedule No. 3, referred to in the foregoing answer.*

NEW YORK, *February* 8, 1865.

Six months after date we jointly and severally promise to pay to the order of Daniel Tyler the sum of twenty thousand dollars, at the office of Charles Carow, 76 South street.

$20,000.

JAMES MONROE.
THOMAS E. ALLEN.

Paid Aug. 8, 1865.

[U. S. rev. stamp, $10.]

Schedule No. 4, referred to in the foregoing answer.

[U. S. rev. stamp, $50, cancelled.]

This indenture, made this eleventh day of February, one thousand eight hundred and sixty-five, between the Morris County Bank of Morristown, in the State of New Jersey, party of the first part, and James Monroe, of the city of New York, party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of fifty thousand dollars, lawful money of the United States of America, to them paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred, and set over, and by these presents do grant, bargain, sell, assign, transfer, and set over, to the said party of the second part, two certain indentures of mortgage, both made and executed by Theodore T. Wood and Mary B., his wife, to the said parties of the first part, one thereof bearing date the sixth day of June, one thousand eight hundred and fifty-six, and recorded in the office of the clerk of Morris County on the fifth day of October, one thousand eight hundred and fifty-seven, in book C 2 of mortgages, at page 541, and made to secure the sum of one hundred thousand dollars, and the other thereof bearing date the eighth day of October, one thousand eight hundred and fifty-seven, and recorded in the office of the said clerk on the twelfth day of the said October, in book C 2 of mortgages, at page 557, and made to secure the sum of seventy-five thousand dollars, together with the bonds or obligations therein described, and the money due and to

grow'ing thereon, with the interest; and also a certain mining lease made and entered into by and between the said Theodore T. Wood and the Trenton Iron Company, bearing date the first day of April, one thousand eight hundred and sixty-one; to have and to hold the same unto the said party of the second part, his executors, administrators, and assigns, to and for his and their own use and benefit forever, subject only to the provisions in the said indentures of mortgages mentioned. And the said party of the first part does hereby make, constitute, and appoint the said party of the second part, his executors, administrators, and assigns, its true and lawful attorney, irrevocable in its name or otherwise, but at his own proper costs and charges, to have, use, and take all lawful ways and means for the recovery of the said money and interest, and in case of payment to discharge the same as fully to all intents and purposes as the said party of the first part might or could do if these presents were not made.

Now, therefore, the condition of this instrument is such that if the said party of the first part shall well and truly pay or cause to be paid to the said party of the second part the sum of fifty thousand dollars on the eleventh day of June next, together with interest thereon at and after the rate of six per centum per annum, interest payable monthly, then this instrument to be void, else to remain in full force and virtue.

In witness whereof the parties hereto of the first part have caused these presents to be executed by their president, and their corporate seal to be hereunto affixed, the day and year first above written.

[SEAL OF M. C. BANK.] THOMAS E. ALLEN,
President of Morris County Bank.
MORRIS COUNTY BANK.
By THOS. E. ALLEN,
President.

Signed, sealed, and delivered in presence of—
RICHARD L. LEGGETT.
HENRY PALMER.

The word "demand" stricken out and the words "the eleventh day of June next" interlined in line 18, of page 2, before execution.

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on this thirteenth day of February, A. D. 1865, before me, the subscriber, a commissioner for the State of New Jersey for taking the acknowledgement and proof of deeds, personally came Thomas E. Allen, the president of the Morris County Bank, known to me, who being duly sworn did depose and say that he resided in the town of Morristown, in the State of New Jersey; that he was president of the Morris County Bank; that he knew the corporate seal of said bank; that the seal affixed to the foregoing assignments was such corporate seal; that it was affixed by authority of said bank; and that he signed his name thereto by like authority as president of said bank for the uses and purposes before expressed.

In witness whereof I have hereunto set my hand and official seal this 13th day of February, A. D. 1865.

[L. S.] HENRY PALMER,
Commissioner for the State of New Jersey.

34 *Schedule No. 7, referred to in the foregoing answer.*

[U. S. rev. stamp, $50, cancelled.]

This indenture, made this eleventh day of February, one thousand eight hundred and sixty-five, between James Monroe, of the city of New York, party of the first part, and Robert B. Campbell, of the same place, party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of fifty thousand dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, assigned, transferred, and set over, and by these presents does grant, bargain, sell, assign, and transfer and set over, to the said party of the second part, two certain indentures of mortgages, both made by Theodore T. Wood and his wife to the Morris County Bank, one thereof bearing date the sixth day of June, one thousand eight hundred and fifty-six, and recorded in the office of the clerk of Morris County on the fifth day of October, one thousand eight hundred and fifty-seven, in book C 2 of mortgages, at page 541, and made to secure the sum of one hundred thousand dollars, and the other thereof bearing date the eighth day of October, one thousand eight hundred and fifty-seven, and recorded in the office of the said clerk on the twelfth day of said October, in book C 2 of mortgages, at page 557, and made to secure the sum of seventy-five thousand dollars, together with the bonds or obligations therein described and the money due and to grow due thereon, with the interest; and also a certain mining lease, made and entered into by and between the said Theodore T. Wood and the Trenton Iron Company, bearing date the first day of April, one thousand eight hundred and sixty-one; which said bonds and mortgages and lease were duly assigned to the said party of the first part, by indenture bearing date the eleventh day of February, one thousand eight hundred and sixty-five, to secure the payment of the sum of fifty thousand dollars and interest; to have and to hold the same unto the said party of the second part, his executors, administrators, and assigns, to and for his and their own use and benefit forever, subject only to the provisions in the said indentures of mortgage and assignment mentioned; and the said party of the first part does hereby make, constitute, and appoint the said party of the second part, his executors, administrators, and assigns, his true and lawful attorney, and the true and lawful attorney of the said the Morris County Bank, irrevocable in his or its name or otherwise, but at his proper costs and charges, to have, use, and take all lawful ways and means for the recovery of the said money and interest, and in the case of payment to discharge the same as fully to all intents and purposes as the said party of the first part might or could do if these presents were not made.

Now, therefore, the condition of this indenture is such that if the said party of the first part shall well and truly pay or cause to be paid to the said party of the second part the sum of fifty thousand dollars on the fifth day of August, which will be in the year one thousand eight hundred and sixty-five, together with interest thereon at and after the rate of six per centum per annum, then this instrument to be void; else to remain in full force and virtue.

In witness whereof the party hereto of the first part has hereunto set his hand and seal the day and year first above written.

JAMES MONROE. [L. S.]

Signed, sealed, and delivered in presence of—

E. P. NORTON.

THOS. SADLER.

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on this sixteenth day of February, one thousand eight hundred and sixty-five, before me, Thomas Sadler, a commissioner of the State of New Jersey, under the great seal of the said State, duly commissioned and sworn, and residing in the city of New York, personally appeared James Monroe, who I am satisfied is the individual described in and who executed the foregoing instrument, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed, and thereupon delivered the same, as his voluntary act and deed, for the uses and purposes therein expressed.

In witness whereof I have subscribed these presents, and hereunto affixed my official seal, at the city of New York, the day and year last *year* above written.

[L. S.] THOS. SADLER.
Commissioner of New Jersey, 11 Wall st., New York.

(Endorsed:) U. S. circuit court, southern district of New York. Daniel Tyler, pl'ff, ag'st Rob't B. Campbell, defendant. Answer. C. A. Hood, def't's att'y; C. B. Moore, of counsel. Filed Feb'y, '69.

To the judges of the circuit court of the United States for the southern district of New York:

The replication of Daniel Tyler, complainant, to the answer of Robert S. Campbell, defendant.

This repliant, saving and reserving to himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto says that he will aver, maintain, and prove his bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and
36 prove as this honorable courtshall direct, and humbly prays as in and by his said bill he has already prayed.

MILLER & PECKHAM,
Sol'ors for Compl't, 18 Wall st., N. Y. City.

37 In the circuit court of the United States for the southern district of New York.

DANIEL TYLER, A CITIZEN OF THE STATE OF New Jersey,
vs.
ROBERT B. CAMPBELL, A CITIZEN OF THE State of New York.
} In equity.

Testimony of complainants, taken by and before Charles W. Newton, United States examiner for the southern district of New York, under the 67th rule of the Supreme Court of the United States.

JUNE 2ND, 1869—2 o'clock p. m.

Present, Charles W. Newton, United States examiner, and counsel for respective parties.

W. H. PECKHAM, Esq., complainant's solicitor, calls as a witness

DANIEL TYLER, who, being duly cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth in the matter of controversy mentioned in the caption herein, deposes and says as follows:

I am a citizen of the State of New Jersey; I reside in the village of Red Bank; have resided there for more than four years; am 70 years of age. I know Robert B. Campbell, the defendant in this suit; have known him, I should think, from 8 to 10 years.

1. Q. About the first of January, 1865, did Mr. Campbell apply to you in relation to a loan to be made to any other person? If yea, state what application he made.

A. He did; he made application to me to loan to James Monroe a sum of money, from twenty to twenty-five thousand dollars.

2. Q. State in detail, so far as you recollect, what occurred between you on the occasion of this application.

A. I stated to Mr. Campbell that my funds were well invested, and that I was not a money-lender, and that I had no disposition to change my investments.

3. Q. Question repeated.

(Objected to by counsel for respondent.)

A. Mr. Campbell replied that he thought the investment a good one, that the security was undoubted, it being in a mortgage on a mine, an iron mine, in New Jersey. He stated beside that he knew Monroe; that he was a man of means; owned a house in some part of New York City, and was, as he, Campbell, supposed, a responsible man for a loan of that amount.

4. Q. Did he say anything as to the object as to which this money was wanted?

(Objected to as leading, and as the witness has answered as to the transaction.)

A. He said the money was wanted or would be applied to relieve the Morris County Bank, to enable it to resume business.

5. Q. Did he speak of the securities, the mortgage you have mentioned in relation to their situation at the time?

(Same objection as to last question.)

A. He said the mortgage was being foreclosed, and that the probability was that the loan would be paid from the proceeds of the foreclosure at an early day.

6. Q. Did you agree to the proposal made by him; if yea, upon what terms and conditions, if any?

(Objected to on the ground that it is in writing.)

A. I did agree at a subsequent time to make the loan conditional; that the mortgage owned by the Morris County Bank, which was represented to have been assigned to Monroe, should by Monroe be assigned to Mr. Campbell as trustee, for the security for the note given for the loan.

7. Q. Was anything said between you and Mr. Campbell in relation to how he should deal with the securities when assigned to him, and to what extent he should oversee their management?

(Objected to as leading, and because the transaction was in writing, and because the question gives no date whatever.)

A. Mr. Campbell agreed to draw all the papers in the case; to act as trustee, and to relieve me from any labor in the transaction; he agreed to collect the money and pay it over, and to do everything necessary to secure the loan.

8. Q. When and how did he make these agreements of which you have last spoken?

A. The agreement was a verbal one in the first instance, and was carried out by his drawing up certain papers as proper in the transaction, which I signed and left in his possession; these agreements were made in the latter part of 1865.

9. Q. Before or after the making of the papers?

A. Before the making of the papers the conversation took place; one of my first interviews with Mr. Campbell was as early as the 28th of February, 1865.

10. Q. Did you make any loan in consequence of this proposal? If yea, state what, and, as near as you can say, when.

(Objected to as calling for conclusions and not facts, and because the whole matter is in writing.)

A. I did make first a loan I think of twenty or twenty-five thou-
39 sand of six-twenty United States bonds, and subsequently a loan of eighteen or twenty thousand of bonds of the same description; these bonds were handed to Mr. Campbell to be delivered to the parties making the loan.

11. Q. Was any more money advanced by you upon security of this mine mortgage; if yea, how much, when, and to whom was it given?

A. Forty-five hundred dollars was subsequently advanced through Mr. Campbell, on which a note for that amount, with interest payable in 60 days, I think, was to be taken by Mr. MCampbell; that note was left in Mr. Campbell's hands for collection.

12. Q. Did you know from anything which Mr. Campbell said in your hearing, or from your own knowledge, what became of the bonds and money which you gave to him?

A. Mr. Campbell told me that he delivered the bonds into the hands of Allen—Thomas E. Allen, in Monroe's presence.

13. Q. Did you at any time apply to Mr. Campbell after this loan in reference to the repayment of the money and its security?

A. After the $4,500, sometime after the $4,500 note became due, I called on Mr. Campbell to know if he had received the money; he told me he had not, that he had overlooked the note and had not presented it at the place where it was made payable; that he would see Monroe and get the money. I called two or three times on Mr. Campbell in reference to the payment of that $4,500 note; he said Monroe promised to pay it, but had not; he said he would see Monroe again to see if he could get the money; about that time the other loan was maturing; I stated to Mr. Campbell that I was exceedingly anxious about the other loan in consequence of the nonpayment of the $4,500 note; it looked bad; he stated that he was looking after that, and subsequently stated to me that he had attended the sale at Jersey of the mine, and that it had sold for enough to secure the debt; a few days after that I saw Mr. Campbell again and asked him if he had got the money; he said he had not, and that he could not until 30 days after the sale, as the master had a right to retain the money 30 days after payment; that he had seen Allen and Monroe, and thought everything right; a short time after this conversation Mr. Campbell came to my house at Red Bank; I asked him if the $4,500 note had been paid; he said no; I repeated my distrust of Monroe and Allen, and then said to Mr. Campbell, "Is it not possible for Allen and Monroe to get the money paid for the mine outside of you?" I meant as trustee. He replied it was impossible.

14. Q. Was any part of this money actually received by you?

A. Yes; $20,000.

15. Q. From whom, and when?

A. It was received from Mr. Campbell, and a few days after the $20,000 note became due.

16. Q. What became of the $20,000 note?

40 A. It was in Mr. Campbell's hands, and I presume was given up when the money was paid.

17. Q. Were any steps taken in New Jersey for the recovery of the balance of this money? If so, state what was done.

A. A suit was begun against Thomas E. Allen.

18. Q. How came that suit to be brought? State as fully as you can recall the circumstances.

A. Mr. Campbell informed me finally that the money had been received by Allen and other parties; that he had seen Allen and he refused to pay over the money; that it would be necessary to commence a suit against Allen or Monroe or both, or the Morris County Bank—they were all included; that he would go over to Morristown and consult counsel; he came back and told me that he had consulted Theodore Little, who he understood to be one of the best lawyers at the bar in Morris County, and that he wished me to see Mr. Little with him for consultation; we did see Mr. Little together, and it was advised by Mr. Campbell and Mr. Little to commence suit against Thomas E. Allen personally. The question then arose in whose name this suit should be commenced; I stated that I wished it to be commenced in Mr. Campbell's name as trustee; that I did not wish to be mixed up in it at all further than it was necessary; it resulted—I think not at that meeting, but subsequently—that the action was brought in my name, and at the advice of both Mr. Little and Mr. Campbell.

19. Q. Did this suit result in the obtaining of the money?

(Objected to as a result, not facts.)

A. No, sir.

20. Q. Was any suit, to your knowledge, brought in the State of New York in regard to any part of this money? State what you know of any such transaction.

A. Mr. Campbell, as my attorney, commenced an action in the New York courts in order to get a judgment on the $4,500 and the $25,000 loan—the large loan—to Monroe; he advised this being done in order to fix the amount due after deducting the $20,000 payment; he told me he had seen Monroe and that there would be no difficulty in obtaining the judgment, and that this judgment would fix the amount still due on the loan; Mr. Campbell afterwards told me that he obtained the judgment in the regular form.

21. Q. Did you ever see the original papers in the matter? I mean those other than those you signed.

A. I don't recollect having seen them; they were all left with Mr. Campbell.

Complainant's counsel offers in evidence agreement by James Monroe with Daniel Tyler, dated Feb'y 1st, 1865, which is hereunto annexed, marked Exhibit A for complainant, Charles W. Newton, U. S. examiner, June 2d, 1869.

Also agreement between James Monroe and Daniel Tyler with Robert B. Campbell, dated Feb'y 11th, 1865, which is hereto
41 annexed and marked Exhibit B for complainant, Charles W. Newton, U. S. examiner, June 2d, 1869.

Also promissory note of James Monroe for $4,500 to Daniel Tyler,

dated April 17th, 1865, at sixty days, which is hereto annexed and marked Exhibit C for complainant, Charles W. Newton, U. S. examiner, June 2d, 1869.

Also letter from James Monroe to Robert B. Campbell, dated April 17th, 1865, which is hereto annexed and marked Exhibit D for complainant, Charles W. Newton, U. S. examiner, June 2d, 1869.

Also letter of Robert B. Campbell to Thomas E. Allen, dated July 11th, 1865, which is hereto annexed and marked Exhibit E for complainant, Charles W. Newton, U. S. examiner, June 2d, 1869.

Also letter of Robert B. Campbell to Thomas E. Allen, dated July 12th, 1865, which is hereto annexed and marked Exhibit F for complainant, Charles W. Newton, U. S. examiner, June 2d, 1869.

Also letter from same to same, dated August 4th, 1865, which is hereto annexed and marked Exhibit G for complainant, Charles W. Newton, U. S. examiner, June 2d, 1869.

Also letter from same to same, dated August 22d, 1865, which is hereto annexed and marked Exhibit H for complainant, Charles W. Newton, U. S. examiner, June 2d, 1869.

Also letter from same to same, dated August 30th, 1865, which is hereto annexed and marked Exhibit I for complainant, Charles W. Newton, U. S. examiner, June 2d, 1869.

Also letter from same to same, dated September 6th, 1865, which is hereto annexed and marked Exhibit K for complainant, Charles W. Newton, U. S. examiner, June 2d, 1869.

Also affidavits of Daniel Tyler and Robert B. Campbell, to obtain order to hold to bail, which are hereto annexed, marked Exhibit L for complainant, Charles W. Newton, U. S. examiner, June 2d, 1869.

The further examination of Mr. Tyler is adjourned to June 4th, 1869, at 2 o'clock p. m.

JUNE 4TH, 1869—2 p. m.

Present, Charles W. Newton, United States examiner, and counsel for respective parties.

W. H. PECKHAM, Esq., counsel for complainant, proceeds with the examination of the last witness, Daniel Tyler, as follows:

22. Q. I have put in evidence several letters purporting to be written by the defendant to Mr. Thomas E. Allen; look at them; do you
42 know the handwriting of those letters marked Exhibits E, F, G, H, I, and K; if yea, whose is it, and when did you first know of those letters being written?

A. They are all in Mr. Robert B. Campbell's handwriting; I never saw those letters until in the Allen trial in New Jersey in 1866, I guess.

23. Q. When did you first know of their having been written?

A. I do not think I knew it until the Allen trial was commenced, certainly not until after the note and contract was past due; some of them I never knew of until after the Allen trial had begun.

24. Q. Whenever your knowledge was acquired, was it before or after these letters were written?

A. It was after the letters were written.

25. Q. Did you direct the writing of any of these letters?

A. Not one of them.

26. Q. Did any one, to your knowledge, retain Mr. Little as counsel in the attempt to recover the money you advanced in New Jersey, if yea, who, and did you?

(Objected to by defendant's counsel.)

A. Mr. Little was retained in the case not by me, but, as he and Mr. Campbell informed me, by Mr. Campbell.

27. Q. Did you know that your name was to be used in the suits in New York, and who, if you know, paid the expense of these suits? I mean the suits brought against Mr. Monroe.

A. I did not know that my name was used, nor did I ever pay any expense in that suit.

28. Q. Who had possession of the assignments, notes, and other securities for the loan you say you made?

A. They were left in the possession of Mr. Campbell; I think all of them; the trustee instrument may have been in my possession, but I am not certain of that.

29. Q. Did you, after the loan was made, take any steps to advise the solicitor conducting the foreclosure of the mortgage in New Jersey, of its having been assigned to you?

A. Only by placing the entire transaction in the hands of Mr. Campbell.

30. Q. Why did you not notify that solicitor?

(Objected to by defendant's counsel.)

A. Because I had left the entire transaction in Mr. Campbell's hands, and I had confidence in his attending to it, and doing what was necessary in the case.

31. Q. Was the assignment of the mortgage sent for record that you know of?

A. Not that I know of.

32. Q. Why not?

(Objected to by counsel for defendant as calling for opinion and not for facts.)

A. I know of no reason why it was not; I supposed it had until the Allen trial had begun.

33. Q. When first did you know or hear that the assignment was not recorded (and that the solicitor in the foreclosure in New Jersey
43 had not received notice of it); about what time in relation to the sale under such foreclosure?

(All that part of question in parentheses objected to by defendant's counsel.)

A. I didn't know of it until the Allen trial was commenced; in fact, the first positive information I had upon that point was the solicitor's testimony on that trial.

34. Q. Can you tell us when this Allen trial was?

A. In the winter of 1865–1866 or 1866–1867; I think the trial was in May, 1867.

35. Q. When you have spoken of the Allen trial have you meant the trial or the suit?

(Objected to by defendant's counsel.)

A. I mean the Allen suit.

36. Q. I observe that by the agreement between yourself and James Monroe, dated February 1st, 1865, and made Exhibit A in this cause, said Monroe engages to repay the indebtedness to you either by conveying to you an undivided one-fourth interest in certain land or else cash he specifies, with interest at six per cent., according to your election, of which notice is to be given ten days prior to August 1st, 1865. Was any such election made and how?

A. It was not made.

37. Q. Why not?

(Objected to.)

A. Because Monroe never acquired title to the property.

38. Q. What property was this?

A. The Hibernia Mine.

39. Q. The same covered by the mortgage and sold under the foreclosure?

A. The same.

40. Q. Do you keep a diary, and did you during the period covered by the transaction in question?

A. I do, and did at that time.

41. Q. Can you refer to it here?

A. Yes, sir; I have it with me.

42. Q. Refer to its entries between June 30th and July 26th, inclusive, 1865, and, refreshing your memory thereby, state whether you had during that period any interviews with defendant on the subject-matter of this suit; give the dates and state what passed on each.

(Objected to by defendant's counsel.)

A. I see on June 30th I called on Mr. Campbell in reference to the $4,500 note; at that time we talked over matter connected with the loan; that is, the $4,500 note was then past due, and that I felt anxious on account of the loan; that I thought it showed bad faith and bad conduct on the part of the parties, and that I was losing confidence in their integrity. Mr. Campbell said thought he should get the money for the $4,500; that he had overlooked the note and hadn't sent it to Mr. Carow's office, where it was payable; that he thought it would all be right. On the 10th of July I saw Mr. Campbell and again expressed my anxiety as to the loan, the $4,500 not having yet been paid; he stating that Mr. Monroe had promised to pay the $4,500, but had not done
44 it; he at that time expressed confidence that Mr. Monroe and Allen were all right and men to be relied on; I saw him again on the 14th of July, 1865, he told me then that he had not received the money for the $4,500 note, but was still trying to get it. He still expressed his confidence in Monroe and Allen, as at the former meeting. On Monday, the 24th of July, 1865, I saw him again; I judge the meeting must have been unsatisfactory, as I see on my memorandum-book, "Left Red Bank at 7 o'clock to attend to Jersey loan—no go, must come up to-morrow." Our next meeting was on the next day, the 25th; saw Mr. Campbell; he said that nothing had been paid, that he was doing all he could to get the claims in the way of a settlement; that was the idea. I saw Mr. Campbell the next day after that, the 26th; there was no result to report; Mr. Campbell told me the $4,500 note is still unpaid.

43. Q. When were you first informed that the property in New Jersey had been sold under the foreclosure?

A. The day after the sale Mr. Campbell informed me that the property was sold, and told me for how much; I forget the exact sum; he told me it was enough to secure the loan.

44. Q. Was anything said between you at any of your interviews after the sale in relation to getting the money from the master; if yea, state what was said?

(Objected to by defendant's counsel on the ground of the mode of examination by leading the witness to general conclusions desired.)

A. After the sale I had a number of interviews with Mr. Campbell, in all of which I urged him to get the money; he told me the money was secure, and he should get it as soon as the usage of the law would

permit. On one occasion he told me the money had not been paid into court, and if it had been the master was entitled to keep it thirty days. The last interview I had with Mr. Campbell on the subject of the payment of the loan was, I think, at my house at Red Bank, when, after stating my anxiety on the subject of the payment, I asked him if it was not possible for Allen or Monroe to get that money without his knowledge, or words to that effect, and he answered me at once, "It is impossible."

45. Q. Do you remember what was the date of the sale in New Jersey?

A. I do not recollect the date; I think it was in July.

46. Q. Have you anything from which you can identify the day on which Mr. Campbell told you the sale was the day before?

A. I can't fix that date by any memorandum that I have.

47. Q. Refer to any entries in your diary at dates prior to the actual advance of any of the money you loaned, and, refreshing your memory thereby, state anything which you said to Mr. Campbell or or he to you respecting the taking care and managing of the securities assigned him for you, if any such thing was said.

(Objected to.)

A. There were a number of interviews between Mr. Campbell and myself between the 25th of January, 1865, and the 13th of Feb-
45 ruary, on which day the loan was closed; I told Mr. Campbell [objected to by defendant's counsel, as the witness had gone over all this ground, and objects to the repetition, as the witness does not propose to give dates] that I would not make the loan unless he would agree to draw all the papers and take the entire charge of the transaction. (Mr. Campbell agreed to this, and agreed to be the trustee, and such was my confidence in Mr. Campbell that I never read or examined critically any paper submitted to me by him to sign, and I signed all he ever offered.)

(All that part of answer in parentheses objected to by defendant's counsel.)

Cross-examined by C. A. HAND, Esq., counsel for defendant:

48. X Q. Have you stated or given all that transpired between yourself and Mr. Campbell, in writing or otherwise, on this subject?

A. All upon the subject testified of, so far as I recollect.

49. X Q. Have you produced all the letters on these subjects written to you by Mr. Campbell?

A. I don't recollect of any that I have not produced; there may be letters that I have not produced.

50. X Q. Look at the exhibits produced and see what letters from Mr. Campbell to you are among them.

A. There are none of those letters addressed to me.

51. X Q. Have you received no letter from Mr. Campbell on that subject?

A. I think I have—I have no doubt about it.

52. X Q. Several, haven't you?

A. There may be 3 or 4—2 or 3. I don't know what you mean by several.

53. X Q. Did you write any letters to Mr. Campbell on these subjects?

A. I presume I did.

54. Q. Where are the letters received by you from Mr. Campbell on these subjects?

A. I think they are in the hands of the attorneys who tried the Allen suit.

55. X Q. Do you mean your attorneys or Allen's attorneys?

A. I mean my attorneys, those on the side against Mr. Allen.

56. X Q. Have you looked for them at your own house?

A. I did at the time of the Allen suit.

57. X Q. Did you find them?

A. I must have found such as were produced on that trial if there were any.

58. X Q. Have you any recollection of any letters from Mr. Campbell to you, or from you to Mr. Campbell, being produced at that trial?

A. I have not.

59. X Q. Are you positive that any such letter was handed to your attorney on that trial?

A. I am not positive.

60. X Q. Then you are not positive that you gave them to your attorney?

46 A. I am positive that I gave some letters to the attorneys employed in that suit; whether they used them or not I don't know.

61. X Q. Do you mean by that that you are positive that you gave any letters from Mr. Campbell to you to that attorney?

A. I gave letters to Mr. Parker, who was the counsel in the case.

62. X Q. Mr. Parker is now present assisting you in this examination, is he not?

A. Yes, sir.

63. X Q. Does your diary show the dates of sending or receiving letters?

A. It does not.

64. X Q. It shows nothing about letters, does it?

A. No, sir.

65. X Q. Are the interviews you have testified to to-day as the interviews derived by you from your diary additional to the interviews previously testified to by you, or are they the only interviews of which you have a memorandum or recollection between you and Mr. Campbell on these subjects?

A. They are not in addition, and only embrace those within the dates given in the question.

66. X Q. Are they the only interviews to which your previous testimony refers?

A. No; I think not.

67. X Q. Give the dates of any other interviews between yourself and Mr. Campbell, on the whole subject, from the beginning up to the middle of November, 1865.

A. Well, I had an interview with Mr. Campbell on the 28th of February, 1865; again on the 2nd of March; again on the 8th of May.

The further cross-examination of Mr. Tyler is adjourned to June 10th, 1869, at 2 o'clock p. m.

JUNE 12TH, 1869—2 p. m.

Present Charles W. Newton, United States examiner, and counsel for respective parties.

C. A. HAND, Esq., respondent's counsel, proceeds with the cross-examination of Daniel Tyler as follows:

68. X Q. Proceed with your answer pending at the last session.

A. I had interviews with Mr. Campbell on the 30th of June, 1865, again on the 10th of July, on the 14th of July, 24th of July, 25th of July, 26th of July, 4th of August, on the 1st, 4th, 14th, 23rd, 25th, 26th of September, the 2nd, 11th, 20th, 23rd, 24th, and 30th of October, the 7th and 13th of November, 1865.

69. X Q. Are these entries in your diary all made by you, and are they in ink or pencil?

A. They are made by me and made in ink, every one of them, and made at the time.

70. X Q. Were they made during the interviews?

A. No, sir.

71. X Q. Were they made after you got back to your residence?

47 A. They were made very soon after the interviews, where I cannot tell.

72. X Q. Do they state anything further than the fact of an interview having taken place?

A. As a general thing they state the object of the interview.

73. X Q. Does the diary contain memoranda of interviews of persons other than Mr. Campbell?

A. It does of any person with whom I had business interviews of importance.

74. X Q. Does it contain the dates of your interviews with Monroe?

A. In one instance only.

75. X Q. What date is that?

A. 14th of July.

76. X Q. Where was that interview of the 14th of July?

A. At Mr. Campbell's office.

77. X Q. Does your diary show the places where the interviews took place that are entered there?

A. Not generally.

78. X Q. In giving your answer as to the dates of interviews I notice that you have consulted another paper than the diary; was that written by you and when?

A. It is extracts taken from the diary within the last 3 or 4 days, in order more immediately to refer to them.

79. X Q. Are you willing that I should examine this diary?

A. I don't know as there is any objection.

80. X Q. I see an entry in your diary of the 6th of February, also of the 8th of February, also the 10th of February, each of which speaks of you as at New York attending to loan to Morris County Bank; you were at New York on that business on each of these occasions, were you not?

A. I was residing or staying in New York at that time, in the family of my son-in-law, Mr. Carow, temporarily.

81. X Q. Look at those three entries particularly and say whether on each of those days you were not occupied with or attending to the matter of that loan.

A. Yes; that loan was considered and attended to on each of these days.

82. X Q. And on the 13th the papers were signed, were they?

A. Yes, sir.

83. X Q. Look at the entry of the 28th of February, and see if it does not state as the purpose of your interview that day with Mr.

Campbell to see about the execution of the Morris County Bank contract.

A. The entry is, "Saw Campbell as to execution of Morris County Bank contract."

84. X Q. What contract was that; was it not the contract between Monroe, yourself, and Mr. Campbell?

A. My impression is that that entry refers to a changing of the Morris County Bank from a state to a national institution; I
48 think it was something connected with the bank, and not with the Monroe loan.

85. X Q. Had you at that time entered into any contract of that sort to convert the bank into a national bank?

A. I had not.

86. X Q. Are you positive that the contract referred to in that entry was not the contract dated 11th February, 1865, between Monroe, yourself, and Campbell?

A. I am not, but I don't think it is, from the phraseology of the entry.

87. X Q. Look at the entry of the 17th of April, and see if you didn't see him that day.

A. Yes, I did; the entry is, "Saw Monroe as to Morris County Bank and agreed to loan $4,500 for sixty days."

88. X Q. On the 25th of April Mr. Campbell and Mr. Carow went to New Jersey, to your house, with you, did they not?

A. They did, yes, sir, and returned next day.

89. X Q. What Halsey is it that is referred to in the entry of the 27th of April?

A. He is a lawyer at Norwich, Conn.

90. X Q. On the 2nd of May did you not see Mr. Monroe?

A. No, sir; the name in the entry is More.

91. X Q. What relation had More to the Morris County Bank?

A. He owned stock there—a stockholder.

92. X Q. Your interview with him that day was about the bank, was it not?

A. It was something about the bank I saw him for.

93. X Q. Did you not see Mr. Monroe on the 8th of May?

A. Yes, sir.

94. X Q. On the 6th of June, 1865, I see entered, "Sale of mine;" that is the mine that is mortgaged, is it not?

A. Yes, sir; it was the day of the expected sale of the mine.

95. X Q. I see in your entry of the 30th of June the only memorandum respecting Mr. Campbell is, "Saw Campbell;" as to $4,500, that was the object of the interview, was it not?

A. It was to get that $4,500, which I supposed was past due.

96. X Q. On the 10th of July the only entry respecting Mr. Campbell is, "Saw Campbell;" as to Monroe loan, is it not?

A. Yes, sir.

97. X Q. I see there are no entries between the 15th of July and the 22d, and the 27th of July to the 3d of August; I am right, am I not?

A. Yes, sir; the reason for that is I was sick; I think from the 15th to the 22d, I was ill at home and made no entries at all except Red Bank; I can't recollect the occasion of the other blanks.

98. X Q. Does your diary of date the 4th of August show any entry of Mr. Campbell's name?

A. It does not.

99. X Q. It does contain Monroe's name, does it not?

49 A. The entry is, "Left at 7½ for New York to see Monroe; nothing paid."

100. X Q. Read the entry on this subject of date 8th of August.

A. Monroe paid $20,000.

101. X Q. After the 8th of August what is the next entry as to Mr. Campbell?

A. The 25th of August; it is, "Mr. Campbell looking into sundry transactions."

102. X Q. Did you see Mr. Campbell on the 1st of September?

A. I think I did from the entry made on that date; and I think at that time he informed me of Monroe's explosion.

103. X Q. On the 31st of October did you see Monroe?

A. Yes, sir; I saw Campbell and Monroe—I judge so from the entry.

104. X Q. Have you brought with you the letters I asked for at the last meeting?

A. I brought a package of letters with me to-day, which I have handed to my counsel, and which he states he has not had time to examine.

105. X Q. At what place was it that you first learned that Monroe wanted this loan?

A. I think it was at Mr. Carow's house, in Livingston place.

106. X Q. Was it not at his office?

A. It may have been, but I think it was at his house.

107. X Q. Is Mr. Carow connected with Mr. Campbell by marriage?

A. Mr. Campbell married a niece, I believe, of Mr. Carow's.

108. X Q. Did you not frequent Mr. Carow's office in New York?

A. Yes, sir; I was there from time to time.

109. X Q. Was it not the result of that conversation that you said Mr. Monroe might present to you a written application?

A. Not first; I guess it was at a subsequent time.

110. X Q. It was before any consent on your part to make the loan, was it not?

A. It was before I made the loan that the application was made.

111. X Q. Was a written application presented to you signed by Mr. Monroe?

A. Mr. Campbell either made a verbal or written application as coming from Mr. Monroe, I don't remember which; my impression, my belief, is that that was verbal.

112. X Q. Do you not remember that, after you said a written application might be presented to you, such an application was presented to you?

A. I am not positive that I said a written application might be made, or that one was made; I don't remember of seeing such an application among the papers and therefore I am not positive about; this refers to the $25,000 loan.

113. X Q. Look at the paper I now show you and say whether you did not receive it before making any of the loans.

A. I must have received a paper to this effect, or else a verbal
50 proposition to this effect, for the paper contains substantially the proposition to me; I see the endorsement on the back in my handwriting.

114. X Q. Now please to answer whether or not before making the loan you received that very paper now in your hands.

A. I don't recollect; the only thing which would induce me to believe that I had seen it is the endorsement on the back in my handwriting.

115. X Q. That paper has been in your possession, has it not?

A. I don't know whether it has or not; if it had been I don't know how it got out.

116. X Q. Have you any impression or belief as to whether or not that paper was received by you?

A. My impression is that that paper was shown to me by Mr. Campbell as the form of the proposition that was to be made to me by Mr. Monroe; I have seen that paper and there is my endorsement on the back of it in my handwriting, "Mr. Monroe."

117. X Q. Are you in the habit, upon receiving letters or other papers and filing them away, of making an endorsement upon them similar to that for the purpose of recognizing them readily among your papers upon any future reference to them?

A. Not similar to that; I should have endorsed what it was and gone into the particulars of the proposal; that is the reason I do not believe this paper was ever left in my possession.

118. X Q. Is it your impression that Mr. Campbell simply showed you that paper, without leaving it with you, and that you immediately gave it back to him and made that endorsement on the back of it?

A. My impression is that Mr. Campbell showed me or sent to me that paper as the form or proposition that Monroe was to make, and that I returned it to him at the time or very soon after; from the endorsement made simply "Mr. Monroe," my impression is that I might have kept it for a night or a day or so, and returned it to him.

119. X Q. Have you now any idea what day you thus received it from him?

A. I have not.

120. X Q. Did you answer the application verbally, or in writing, or both?

A. I don't recollect; my impression is that I answered verbally; if in writing, it is among the papers used in the Allen suit.

(Respondent's counsel here asks that said paper may be marked for identification, and it is marked Exhibit No. 1, for identification, Charles W. Newton, U. S. examiner, June 12th, 1869.)

121. X Q. By whom was the letter now shown you written?

A. By me.

(Counsel for respondent offers said letter to be marked for identification, and it is here marked Exhibit No. 2, for identification, Charles W. Newton, U. S. examiner, June 12th, 1869.)

51 122. X Q. Look at the letter now shown you and say by whom it was written.

A. By me.

(Said letter is here marked Exhibit No. 3, for identification, Charles W. Newton, U. S. examiner, June 12th, 1869.)

123. X Q. Look at paper marked Exhibit No. 3, and after reading it tell me what proposition is referred to in it as of the 27th of January.

A. I suppose it was a proposition made by Mr. Monroe, and signed by him.

124. X Q. Had you not that proposition in your possession when that letter was written?

A. I think I must have had.

125. X Q. On reading these two letters, Exhibits Nos. 2 and 3, do you think that at or about that time you sent this proposition to Mr. Campbell or Mr. Monroe instead of keeping it yourself?

A. I would rather think that that proposition was left in my hands

naturally; my impression is that I should have kept Mr. Monroe's proposition as a business transaction.

The further cross-examination of Mr. Tyler is adjourned to June 16th, 1869, 2 p. m.

JUNE 16TH, 1869—2 o'clock p. m.

Present, Charles W. Newton, U. S. examiner, and counsel for respective parties.

Respondent's counsel proceeds with the cross-examination of Daniel Tyler as follows:

126. X Q. Can you now show me the letters received by you from Mr. Campbell between January 25th, 1865, and November 1st, 1865?

A. I cannot; all the letters are in the hands of Mr. Parker, my counsel.

127. X Q. Are they in that large package that you had with you at the last examination, when I asked to see the letters?

A. I don't know, for the reason that they were all given to Mr. Parker, and I have not seen them since; it was Mr. Parker that brought them here; I gave them to Mr. Parker since this suit was begun; I think it was after the first day's examination, before the present examiner.

128. X Q. Did you also receive during that period letters from Mr. Monroe and Mr. Allen, or either of them?

A. I received, I recollect, one letter that was signed by Mr. Allen and Monroe; I don't recollect of any particular letter aside from that joint letter, still there may have been.

129. X Q. Look at your diary.

A. I haven't got it with me; I thought it would not be needed, and so I did not bring it with me.

130. X Q. By this letter Exhibit No. 3, instead of accepting Monroe's proposition, you made a counter-proposition, did you not?

A. No, I modified the proposition of Mr. Monroe.

52 131. X Q. In your letter Exhibit No. 2 you speak of being satisfied with the security of the lease and mortgage; do you remember to whom besides the defendant you applied to for information on the subject before you sent the letter Exhibit No. 3, making your offer to Monroe?

A. Before or after the date of the letter Exhibit No. 2 I applied to Henry McFarland, of Dover, N. J., for information in regard to the value of this property; I did not apply to any one else.

132. X Q. Before you made this offer Exhibit No. 3, or agreed to make the loan, did you ask Mr. Campbell to go to New Jersey and ascertain what he could about the situation of this Morris County Bank?

A. I don't think I did.

133. X Q. Had you formerly been connected with the Morris Canal Company, of New Jersey, and, if so, when, how, and how long?

A. I was president of the Morris Canal Company in 1844 and 1845, for about a year, I think.

134. X Q. How near Morristown does that canal run?

A. It is 8 or 10 miles, I should think, at the nearest point.

135. X Q. Had you heard of or known the Morris County Bank prior to the making of this loan; and, if so, for how many years?

A. I didn't know that there was any such institution as the Morris County Bank until the proposition for the loan was made.

136. X Q. While president of the Canal Company had you no transaction with banks in Morris County?

A. Not that I recollect of; while I was president the canal was being rebuilt.

137. X Q. Do you know how long Mr. T. T. Wood was cashier of that bank?

A. I never knew Mr. Wood, and don't know how long he was connected with the bank; I have seen by the paper that he was connected with the bank.

138. X Q. Did you learn before making the loan, or hear, that the Wood who gave the mortgages that were being foreclosed had been the cashier of the bank?

A. I think I did from what source; I don't remember.

139. X Q. Do you recollect mentioning to Mr. Campbell or to Mr. Carow some previous knowledge on your part of the bank or of Mr. Wood?

A. I do not.

140. X Q. When and where did you first see Mr. Monroe?

A. It was at Mr. Campbell's office, or at Mr. Carow's office; I think it was at Mr. Campbell's, and after Mr. Campbell applied to me for this loan; soon after.

141. X Q. As Mr. Parker has now come in, I now ask you to show me the letters received by you from Mr. Campbell.

(Counsel for the complainant says that, denying any right on the part of the defendant to ask for the production of letters which
53 he himself has written, and which may not be evidence for himself, he will be very happy, in a few moments, to allow defendant's counsel to peruse the same. After perusal of certain letters by complainant's counsel, he hands them to respondent's counsel for perusal.)

142. X Q. Look at letter now produced by you, or your counsel, dated February 16th, 1865, and say whether that was received by you from Mr. Campbell.

A. Yes, sir.

143. X Q. Were the papers mentioned in it received by you with the letter?

A. I have no particular recollection, but I presume they were; I presume the letter was received the same day, or about the time of its date.

(Respondent's counsel here offers said letter in evidence, and it is here marked Exhibit No. 4, Charles W. Newton, U. S. examiner, June 16th, 1869.

Objected to by complainant's counsel.)

144. X Q. Look at the letter next in date produced by you or your counsel, and state whether it was received by you, and give the date of it; and so with each of the others so produced bearing date in 1865 and 1866.

A. Each of these letters were received immediately after the date thereof, and they are dated respectively Sept. 7th, 1865, Sept. 9th, 1865, Sept. 12th, 1865, Sept. 14th, 1865, Sept. 21st, 1865, Sept. 25th, 1865, Oct. 26th, 1865, Oct. 27th, 1865, Nov. 2d, 1865, Nov. 10th, 1865, Nov. 25th, 1865, and Nov. 30th, 1865, Dec. 11th, 1865, Dec. 26th, 1865, and Dec. 30th, 1865, Feb'y 10th, 1866, Feb'y 19th, 1866, March 8th, 1866, March 14th, 1866, March 15th, 1866, March 17th, 1866, June 4th, 1866, and 25th of Sept. 1866.

(Counsel for respondent here asks that said letters may be marked for

identification in the order of their dates, and they are so marked as Exhibits Nos. 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27, Charles W. Newton, U. S. examiner, June 16th, 1869.

Counsel for respondent now offers in evidence Exhibits Nos. 5, 6, No. 7, No. 8, No. 9, No. 11, No. 12, No. 13, No. 14, No. 15, No. 16, No. 17, No. 18, No. 22, No. 23, No. 27, No. 26.

Complainant's counsel objects to these letters as evidence, especially to those written after August, 1865, as being simply declarations by the defendant, and not lawful evidence in his own behalf; counsel nevertheless reserves to himself the right to withdraw this objection at the hearing.)

145 X Q. Was the letter now shown you written by you?

A. Yes, sir; I have no recollection of the erasure; it is dated Feb'y 8th, 1865.

(Said letter is here marked Exhibit No. 28, for identification, Charles W. Newton, U. S. examiner, June 16th, 1869.)

54 146. X Q. Was this letter dated 24th April, 1865, written by you?

A. Yes, sir.

(Said letter is here marked Exhibit No. 29, for identification.)

147. X Q. Was this letter dated 14th July, 1865, written by you?

A. Yes, sir.

(Said letter is here marked Exhibit No. 30, for identification.)

148. X Q. Was that letter of James Monroe to you dated 14th of July the enclosure made to Mr. Campbell in your letter to him of the same date?

A. I presume it is.

(Said enclosure or Monroe's letter is here marked Exhibit No. 31, for identification.)

149. X Q. Was this letter of August 7th, 1865, written by you?

A. Yes, sir.

(Said letter is here marked Exhibit No. 32, for identification.)

150. X Q. Was this memorandum of September 14th, 1865, written by you?

A. That's my handwriting; I wrote it.

(Said memorandum is here marked Exhibit No. 33, for identification.)

151. X Q. And that letter of September 17th, 1865?

A. Yes sir; that's my writing.

(Said letter is marked Exhibit No. 34, for identification.)

152. X Q. And that letter of September 25th, 1865?

A. Yes, sir; that's my handwriting.

(Said letter is marked Exhibit No. 35, for identification.)

153. X Q. And that letter of Nov. 6th, 1865?

A. Yes, sir.

(Said letter is here marked Exhibit No. 36, for identification.)

154. X Q. And that letter of Nov. 10th, 1865?

A. Yes, sir.

(Said letter is marked Exhibit No. 37, for identification.)

155. X Q. And this letter of December 6th, 1865?

A. Yes, sir.

(Said letter is marked Exhibit No. 38, for identification.)

156. X Q. And that letter of January 6th, 1866?

A. That's mine, sir.

(Said letter is marked Exhibit No. 39, for identification.)

157. X Q. And that letter of March 9th, 1866?

A. Yes, sir.

(Said letter is marked Exhibit No. 40, for identification.)

The further cross-examination of Mr. Tyler is adjourned to June 19th, 1869, at 1 o'clock p. m.

JUNE 19*th*, 1869—1 o'clock p. m.

Present, examiner and counsel for respective parties.

C. A. HAND, Esq., counsel for respondent, proceeds with the cross-examination of Daniel Tyler as follows:

55 158. X Q. Please look at your diary from January 25th, 1865, to February 28th, 1865, and state whether it contains entries of business interviews, or other matters, on each day between those two dates?

A. Yes, sir; it does; there is an entry for every day.

159. X Q. And there is no entry of any interview with Mr. Campbell on any day between those two dates, is there?

A. On the 9th of February there is an entry that might refer to it; the entry is, "Morris County Bank loan not yet decided;" and on the 8th of February, "Attending to Morris County Bank loan;" and on the 6th, "Attending to loan to Morris County Bank;" on the 26th of January there is this entry "Looking into loan—may do."

160. X Q. Is there any entry beside those given in your last answer which in any way refers to this business of the loan?

A. None.

161. X Q. Is there any entry between those dates which contains the name of Mr. Campbell?

A. None.

162. X Q. Who applied to you for the $4,500 loan?

A. Monroe—James Monroe.

163. X Q. When?

A. About the time of the date of the note.

164. X Q. With whom did you make the agreement to make the loan?

A. With Monroe.

165. X Q. Then it's not correct, is it, that the agreement for this loan for $4,500 was made or negotiated by or through Mr. Campbell?

A. It was negotiated through him, and I think the papers were all drawn by him.

166. X Q. In whose handwriting is that paper now shown you?

A. It is in my handwriting.

(Said paper is here offered in evidence and marked Exhibit No. 41, Chas. W. Newton, U. S. examiner, June 19, 1869.)

167. X Q. When was that written?

A. I couldn't fix the date for that; it was about the time of the making of the loan.

168. X Q. Is it not a memorandum of the arrangement made by you with Monroe for that loan?

A. It was undoubtedly a memorandum upon which the arrangement was based; in what particular way it was connected with it I don't remember.

169. X Q. Do you remember whether or not you verified the complaints in the suits against Monroe?

A. I don't recollect; but I presume I did.

170. X Q. In your direct examination you referred to the testimony of the solicitor on the Allen trial; what solicitor was that?

A. Mr. Halsey.

56 171. X Q. Do you remember pretty well what Mr. Halsey testified to in that trial?

A. Nothing very exact.

172. X Q. Since that trial have you refreshed your recollection as to what occurred upon it, by reference to any papers; and, if so, what?

A. I don't think that I have devoted five minutes to the reading or studying of Mr. Halsey's testimony; I merely opened it one day to see as to the point upon which I was testifying.

Redirect by complainant's counsel:

173. Q. You have looked at your diary to-day as to entries between 25th of January, 1865, and the 28th of February, 1865, and you state that on none of the entries specified by you which refer to the Morris County Bank loan was the name of Mr. Campbell contained; where were the transactions to which these entries refer, who were present, and with whom were you conferring or engaged?

A. My impression is that most of those took place at Mr. Campbell's office, or with Mr. Campbell, in his presence; there are two exceptions upon which I called upon Mr. Henry McFarland, at his office, when Mr. Campbell was not present.

174. Q. (Exhibit No. 41 being shown the witness) Of what is this a memorandum; who is meant by the expression "I agree" contained therein?

(Objected to.)

A. It is a memorandum made of the statement of Monroe as to the assets of the bank; Monroe is meant by the expression "I agree;" that was Monroe's proposition.

175. Q. Did you ever propose or agree to put the Morris County Bank under the national law as a national bank?

(Objected to as leading.)

A. Never; I never was asked to do so, and no proposition was ever made to me to do so by anybody.

176. Q. When and where was this paper written, and how came it in Mr. Campbell's possession?

A. It was written about the time of the $4,500 loan, as I have stated before; I have no idea of the place where it was written; it was undoubtedly left with Mr. Campbell, as all the papers relating to transactions between Monroe and myself were, in order to draw up the contract.

177. Q. What had the Morris County Bank and its assets and its being a national bank to do with your loaning Monroe $4,500?

(Objected to as calling for conclusions and inferences.)

A. It was the consideration that would make my stock in the Morris County Bank more valuable.

178. Q. Do you remember the circumstances under which you received the letter from James Monroe, Exhibit No. 31, dated July 14th, 1865, and wrote that to Mr. Campbell of the same date, Exhibit No. 30; if yea, state them.

A. My impression is that in meeting Mr. Campbell on the 10th
57 he requested me to meet Mr. Monroe at his office on the 14th, in reference to another loan; this meeting did not take place on the 14th, and the matter was talked over between us, those parties, and after a good deal of conversation this proposition of Monroe's was made in writing, Exhibit No. 31; after considering it I enclosed it to Mr. Campbell with this letter of mine, Exhibit No. 30, of the same date.

179. Q. I call your attention to the last few words of your letter to

Mr. Campbell, Exhibit No. 30, "which I with this deposit in your hands." How did you convey to Mr. Campbell this letter and the contract and note it speaks of?

A. I handed them to Mr. Campbell myself.

180. Q. Did you have at that time, I mean on the 13th of July, 1865, any belief as to whether solicitor in the Morris County Bank suit, Mr. Halsey, had knowledge of your being assignee of the Wood mortgage; if yea, what was that belief?

(Objected to by defendant's counsel as grossly leading and calling for the witness's irresponsible opinion and inferences.)

A. I had that idea that he had—certainly for the reason that Mr. Campbell had told me that he had taken all the necessary steps to secure the loan.

181. Q. Did you then have any belief or supposition as to the manner in which the money paid to the master in the sale in that suit was to be received from him, and as to the person who was to receive it; if yea, what was that belief?

(Objected to for same reasons as last above noted.)

A. I supposed that it would be received by the solicitors; I supposed Mr. Campbell would receive it as trustee from him, or from the master, so far as the $50,000 was concerned.

182. Q. (Exhibit No. 31, Mr. Monroe's letter, being shown the witness.) Was that proposition carried out?

(Objected to.)

A. Never to my knowledge.

183. Q. (Exhibit No. 32 being shown the witness, dated August 7th, 1865, he is asked:) Where did you then suppose the money referred to was?

(Objected to.)

A. In the hands of the court; I mean the master.

184. Q. I noticed in your diary, somewhere among the entries referred to on your examination, something about "explosion;" to what does this memorandum refer; and give the memorandum?

(Objected to.)

A. On the 1st of September there is an entry, "Monroe explosion, terrible carelessness." It refers to the fact that on that day Mr. Campbell told me that they refused to pay us any more money, and put us at defiance.

185. Q. What had the word "carelessness" to do with that?

(Objected to as calling for the witness's opinions or pretended opinions.)

A. It referred particularly to Mr. Campbell's letter to Allen authorizing Allen to receive the money and hand it to him, instead of going for it himself.

58 186. Q. Exhibit No. 31, dated July 14th, 1865, is Mr. Monroe's letter you addressed your answer to his proposition to Mr. Campbell; why was that?

(Objected to by defendant's counsel.)

A. Because he held the mortgage as trustee, and because everything connected with that Monroe loan passed through him.

Recross-examined by respondent's counsel:

187. X Q. In your redirect examination you again speak of all the papers connected with the transaction between Monroe and yourself as having been left by you with Mr. Campbell; look at the letter from Mr. Campbell to you, dated February 16th, 1865, Exhibit No. 4, and tell

me whether or not you were correct on your cross-examination in stating that the papers mentioned in that letter were received with it by you from Mr. Campbell.

A. These papers were drawn by Mr. Campbell, and had been left with him from their date until the date of this letter Exhibit No. 4.

188. X Q. And that is what you mean then, is it, by stating that the papers were left with Mr. Campbell?

A. All of these papers had been left at one time or another with Mr. Campbell.

189. X Q. The leaving of the papers mentioned in that letter with Mr. Campbell ceased on the 16th day of February, 1865, did it not?

A. No, sir; the $20,000 note was sent to him and he collected it.

190. X Q. Otherwise it ceased on that day?

A. No, sir; the contract was returned to Mr. Campbell when the Allen suit was begun.

191. X Q. You speak of being a stockholder in the Morris County Bank; do you remember how many shares of the stock of that bank you held?

A. I think 550 shares.

192. X Q. At what time was this that you held that number?

(Question withdrawn.)

193. X Q. Is that all the shares you ultimately held in that bank?

A. No, sir; I bought of Brown & Moore some 250 shares, or thereabouts, I think, to get control of the bank, but they were never transferred to my name; those 250 shares have been purchased within the last year and a half last past, and since the Allen suit was begun.

194. X Q. Give me the entry in your diary of July 14, 1865.

A. "New York and Red Bank.—Left at 7 o'clock to meet Mr. Monroe with Campbell."

195. X Q. Is that all the entry in your diary of that date?

A. All of that date.

196. X Q. Was that entry made in your diary at New York or Red Bank?

A. I can't tell; I infer it was made at Red Bank after my return.

59 197. X Q. Look at the letters received by you from Mr. Campbell, and also at the two letters marked Exhibits Nos. 30 and 31, and see if you find among the letters written by Mr. Campbell any note-paper like that upon which the two letters Exhibits Nos. 30 and 31 are written.

A. I don't.

198. X Q. The stamp trade-mark "Dove" is the same on each of the two letters Nos. 30 and 31, is it not?

A. Yes, sir.

199. X Q. Is it your present recollection that you had two interviews with Mr. Campbell on that day?

A. I don't recollect distinctly; I had supposed there were two interviews, but I don't recollect.

200. X Q. Your diary doesn't show that you had any interview with Mr. Campbell on that day, does it?

A. It does not.

201. X Q. In your first direct examination, according to my recollection, you describe Mr. Campbell and yourself as having an interview on that day in which you expressed your anxieties or distrust occasioned by the non-payment of the $4,500 note; do you mean to be understood as having that interview on that day before or after the one spoken of by

you in your redirect examination respecting the two letters Exhibits Nos. 30 and 31?

A. I think it was the distrust relative to the $4,500 note that caused that meeting.

202. X Q. (Question repeated.)

A. I think it was at the same time.

203. X Q. Do you mean to be understood as saying, then, that Mr. Monroe was present at the interview of that day, the 14th of July, mentioned by you in your first direct examination?

A. I mean that this distrust of Mr. Monroe on account of the $4,500 note was communicated to Mr. Campbell that day.

204. X Q. I again ask you whether it was so communicated in the presence of Mr. Monroe or before or after you saw Mr. Monroe?

A. It was communicated to Mr. Campbell, not to Mr. Monroe; whether he was present or not I don't know; I presume it was when Mr. Monroe was in the room with us; kind of side talk between us.

205. X Q. Why, in your direct examination, did you refrain from stating that Mr. Monroe was present at your interview of that day?

A. I do not know that I did not, but my memory has been refreshed by these two papers Exhibits Nos. 30 and 31, which I have never seen since they were passed into the hands of Mr. Campbell on the day of their date until they were introduced on this examination here the other day as 4 exhibits.

206. X Q. Do you mean to be understood as saying that in the presence of Mr. Campbell and Mr. Monroe you wrote this letter
60 Exhibit No. 30, beginning, "Please find enclosed a proposition from James Monroe"?

A. I don't mean to be understood so.

207. X Q. At which of the interviews minuted in your diary was it that your testimony on redirect examination to the effect that Mr. Campbell had told you he had taken all necessary steps to secure the loan refers?

A. On the 25th day of August particularly, at my house at Red Bank; more particularly that.

208. X Q. On the 14th day of July, 1865, in whose possession was Exhibit A?

A. I presume this was in my possession.

Redirect resumed:

209. Q. You mention the 25th of August, 1865, as more particularly a day on which Campbell told you that he had taken all necessary steps to secure the loan; do you mean to be understood that that was the earliest time of his telling you so?

(Objected to as leading, and also the witness professed twice to go gover the particulars of his interviews with Mr. Campbell on his first direct examination.)

A. No, sir; he told me immediately after the sale that the loan was secured by the amount that the property sold for.

210. Q. State here if you recollect the date of the sale.

A. I learn the date was the 20th of June, 1865, by referring to the printed book of the Allen trial.

(Complainant's counsel here offers the diary of Daniel Tyler for 1865 in evidence, and it is marked Exhibit M for complainant, Charles W. Newton, U. S. examiner, June 19th, 1869.)

Subscribed and sworn to before me.

DANIEL TYLER.

The further examination in the above cause is set down for June 26th, 1869, at 12 o'clock m.

JUNE 26TH, 1869—12 o'clock m.

Present, Charles W. Newton, U. S. examiner, and counsel for respective parties. On motion of C. Parker, esq., counsel for complainant, the further examination in this cause is adjourned to July 3d, 1869, at 12 m.

JULY 3, 1869—12 o'clock m.

Present, examiner and counsel for respective parties. On motion of complainant's counsel, the further examination in this cause is adjourned to July 17th, 1869, at 12 o'clock m.

JULY 17TH, 1869—12 o'clock m.

Present, U. S. examiner and counsel for respondent. At 12.45, no one appearing on behalf of the complainant, the examination, on motion of respondent's counsel, is further adjourned to July 24th, 1869, at 12 o'clock m.

61 In the circuit court of the United States for the southern district of New York. In equity.

DANIEL TYLER, A CITIZEN OF THE STATE OF New Jersey,
vs.
ROBERT B. CAMPBELL, A CITIZEN OF THE State of New York.
} On bill, &c.

Examination in the above-stated cause, taken before me, Stephen H. Little, a notary of public, duly commissioned and sworn, in and for the State of New Jersey, at the office of S. S. Halsey, in Morristown, in said district, on the thirtieth day of April, A. D. eighteen hundred and seventy, at ten o'clock a. m., pursuant to due and legal notice, service of which is admitted, in the presence of Cortlandt Parker, of counsel with complainant, and C. A. Hand, esq., of counsel with defendant, of Samuel S. Halsey, a witness for the complainant, who, being duly cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth in the matter of controversy mentioned in the caption herein, deposeth as follows:

Q. What is your business?

A. I am a practising attorney at law. I was solicitor and attorney for the Morris County Bank. As such I had in my hands two mortgages now produced. (Marked Exhibits L 1 and L. 2.)

Exhibit L 1.—Mortgage dated June 6th, 1850, executed by Theodore T. Wood and wife, to the Morris County Bank, of a tract of land at Rockaway, Morris County, on which was the Hibernia Mine, containing nearly sixty-two acres of land.

Another tract, part of the Hibernia Mine.

A third tract in Warren County, known as the Guinea Hollow Tract, and other parcels situated in Morris and Rockaway Townships, expressing consideration of $100,000, conditioned to secure all the indebtedness of the mortgages to the Morris County Bank. Recorded in Sussex County August 30th, 1862, book 10, p. 116.

Recorded in Warren County September 2d, 1862, b'k 14, p. 30.

Exhibit L 2.—Mortgage dated October 8th, 1857, by the same parties to the same, conveying the mining part of same property to secure $75,000, payable October 8th, 1858.

Recorded in Morris County October 12th, 1857, b'k C 2, p. 557.

Exhibit L 1 is also recorded in Morris County, b'k C 2, p. 54, October 5th, 1857.

62 (Counsel for defendant admits the same, described in Schedule No. 5, attached to the answer of defendant, being an assignment from James Monroe to Robert B. Campbell.)

Those mortgages were foreclosed by me in the name of the Morris County Bank, as complainant. I got them for foreclosure about September, 1862.

Q. Was the bank then doing business?

A. No, sir.

Q. What was the matter?

A. The bank had suspended two years before that; first in 1857; afterwards, in 1859 and '60, it suspended again.

Q. From what person did you get them?

A. I got them from Mr. Allen, president of the Morris County Bank.

Q. When did you commence the foreclosure of the mortgages?

A. I issued the writ October 2d, '62, and filed the bill on that day.

Q. Name the parties to this suit.

A. The Morris County Bank complainant, and Theodore T. Wood and wife, Freeman Wood, William W. Wood, the Trenton Iron Company, Ira C. Whitehead, executor of Gibbons, Edwin Ford, Lehigh Coal and Navigation Company, George Richards, Albert K. Riggs, Patrick McBride, George Nailor, Edward Vicars, Edmund L. Benson, William L. King, George Vicars, Frederick Leman, Barthold Schnishugger, Thomas Vicars, Henry Lodge, Edward B. Huntington, John G. Nelson, Richard Bigelow, Thomas Sheldon, and William Ray were defendants.

Q. What decree, if any, was made in that suit? Give the date and amounts.

A. The master's report was dated February 1st, 1865, in which there was reported due the complainant of that date $97,217.95. There was due to Edwin Ford $10,590.96, and the taxed costs on a subsequent mortgage. There was a decree of foreclosure and sale to satisfy the above amounts, dated, I think, February 22d, 1865, and March 24th, 1865. Execution was issued and by me handed to the master, Vancleve Dalrymple, for the purpose of having a sale.

Q. Was the property sold, and when, by whom, for how much?

A. It was sold by the master, on the 20th of June following, for $86,400.

Q. Did you receive the money? Give the dates and amounts.

A. I received nearly all of that money. It was paid as follows:

July 10th, 1865, received a check for	$50,100 00
July 17th, 1865, received a check for	20,000 00
July 18th, 1865, received a check for	10,000 00
July 26th, 1865, received a check for	3,177 30
A lot bid in by bank brought	2,557 50
Master's fees	565 20
Total	$86,400 00

63 Q. What was done with the money?

A. I paid the creditors of the bank, costs of the suit, and the balance to the president of the bank.

Q. State, if you can, the details of these payments, dates, and sums, and to whom.

A. I have the checks here before me:

July 8th, 1865, paid attorney of Levi Keese	$962 24
July 8th, 1865, paid Iron Bank	7,835 54
July 8th, 1865, gave draft for State Bank of Newark on New York, Thomas E. Allen, for	10,499 51
July 11th, 1865, check to Augustus W. Bell	313 09
July 11th, 1865, check to John Wells	9,333 53
July 11th, 1865, check for draft on New York, given to Thomas E. Allen, to pay Edwin Stevens	6,748 01
July 11th, 1865, check to Vancleve Dalrymple, deposit	530 83
July 12th, 1865, check to Charles W. Mulford	128 76
July 10th, 1865, check to Samuel Van Ness	3,090 00
July 18th, 1865, check to Thomas E. Allen, president of Morris County Bank	36,000 00
Paid master's fees	565 20
My taxed costs and counsel fees	872 72
July 27th, 1865, paid Thomas E. Allen, president	6,963 07
Lot on South street, Morristown	2,557 50
Total	$86,400 00

Q. Why did you pay this money over to these parties?

(Objected to by Mr. Hand.)

A. Because I was instructed to by the directors of the bank.

Q. Had you, at any time, information given you that the mortgages spoken of and which you foreclosed had been assigned by the (objected to) bank to James Monroe, and by him to Robert B. Campbell? If yea, state when and from whom you first received such information.

(Objected to.)

A. I was informed that those mortgages were assigned to some parties in New York, either Monroe, Tyler, or Campbell, I think about a month or two months after I had paid out this money as I have stated, and I never knew or heard of their being assigned before that.

Q. Did you know either of the three parties whom you have just mentioned at the time of these proceedings?

A. I knew Mr. Campbell, the defendant, and Mr. Monroe. I did not know Mr. Tyler.

Q. When did you first know Mr. Campbell?

A. It was in the early part of the year eighteen hundred and sixty-five when I first met Mr. Campbell. I don't know whether the meeting was at my office or at the banking-rooms. I am under the impression it was at my office.

Q. Do you remember whether Mr. Campbell was present at the sale of this property, and whether he knew of your reception of the money?

(Last part objected to.)

64 A. Mr. Campbell was present at the sale. He knew I was the solicitor of the bank, and was to receive the money. (Answer objected to.) I told him I was going to receive it.

Q. Had information been given you, or had you had any knowledge

that these mortgages had been assigned, what disposition would you have made of the money?

(Objected to.)

A. I would not have paid the money; or at any rate paid so that I would have been safe.

Cross-examined by Mr. HAND:

Q. How long were you attorney and solicitor of the Morris County Bank, Mr. Halsey?

A. From the fall of 1860 to 1867.

Q. Who was president during that period?

A. Thomas E. Allen.

Q. When was he elected president?

A. I think it was in 1860; I am not certain about the time I became solicitor.

Q. When did he cease to be president, and who succeeded him?

A. He ceased to be president a short time ago and was succeeded either by Gen. Tyler or a receiver appointed by the court.

Q. Have you given the correct date of the suspension of the bank? Was it not in September, 1861, instead of '59 and '60?

A. I think it was in September, 1861.

Q. Did you and Mr. Allen become solicitor and president of the bank after or before its suspension?

A. I commenced practicing law in August, 1860, and acted as attorney in fact of the bank in regard to some estate or lands in my native village, from that date, and my connection as solicitor of the bank began April 11th, 1861. Mr. Allen's presidency, I think, commenced before the suspension.

Q. Who was the active manager of the bank after its suspension?

A. Mr. Allen and Theodore T. Wood.

Q. In what capacity was Mr. Wood manager?

(Objected to.)

A. He had been its former cashier and one of the largest stockholders, and really the most active man in the bank, and after its suspension he still continued to take an interest in it.

Q. Is he living; and, if not, when did he die?

A. He is dead; died November 30th, 1864.

Q. Who was the attorney of his representative or estate?

A. I was the administrator. I settled his estate.

Q. After the death of Mr. Wood who was the active manager of the bank?

A. Mr. Allen.

Q. What was the condition of the foreclosure suit at the time of Mr. Wood's death?

A. There were answers filed by William N. Wood and Edwin Ford. There had been no reference at the time of his death; one had been ordered, I think.

Q. Between his death and February 1st, 1865, what order or other proceedings were taken in this suit?

65 A. December 7th, 1864, affidavits were filed setting forth his death; his representatives were substituted for him, and a new order of reference was obtained. Next thing was a master's report, made February 20th, as of February 1st.

Q. Who was the master?

A. Vancleve Dalrymple, now judge of supreme court.

Q. Was the property all sold on the same day?

A. I think it was.

Q. Can you give the particulars of the sale?

A. Yes, sir. Conrad Poppenhusen purchased the first two tracts mentioned in L 1, for $70,100; George T. Cobb purchased the third tract in L 1, for $8,250; purchased the west tract (4th), for $2,275; the fifth tract was purchased by Alfred Mills, for St. Peter's Church, for $1,400; the next two tracts were really one and the same, purchased by Messrs. Baker & Lounsbury, for $1,825; next tract purchased by Mr. Bell, for the bank, for $2,550; the last two tracts were not sold at this time nor under this advertisement, if I recollect right.

Q. When were these last two tracts sold?

A. Subsequently by the same master, under another suit.

Q. How and when was the deficiency left after this sale realized?

A. A large amount of Theodore T. Wood's indebtedness was incurred by Mr. T. T. Wood, as indorser for Freeman Wood, and Freeman Wood gave mortgages on all his property to secure that; those mortgages I foreclosed. In that way the deficiency was settled.

Q. When was that foreclosure?

A. There were two or three of them. One of them was advertised for February 22, 1864. I have not the date of sale here.

Q. When was the deficiency paid?

A. It must have been paid after December, 1865.

Q. By whom was the amount of that deficiency paid to the bank?

A. I think I settled it with Mr. Allen.

Q. Who were the complainants in these suits?

A. John Mills was complainant in one, Morris County Bank in one, in another Morris County Bank, and in still another, that was sold and credited on this debt at any earlier day.

Q. How much was the decree in favor of Mills?

A. I was not originally the solicitor in that suit. I think the mortgage was for $10,000; am not certain.

Q. Do I understand you that the bank acquired the right to the monies receivable under this mortgage by the payment referred to in your direct testimony of $9,333.33, payment made by you to Mills?

A. Yes, sir; and in this way. The bank owed Mills that money—borrowed money. He was not satisfied of its safety, and threatened suit, and this mortgage was passed to him as security for that debt, to be surrendered when that debt was paid.

Q. And this foreclosure did not help to make up the deficiency?

66 A. I think it did. A portion of the property embraced in the Mills' mortgage was also embraced in the Freeman Wood mortgage. The sale of the property under the John Mills mortgage was settled about August 1, 1865, and the sale under the Freeman Wood mortgage was closed in the early part of 1865. The Mills property brought $6,810, of which property five-sixths was embraced in the other mortgage, and had been included in the sale under the other mortgage.

Q. Can you now give me the dates when you paid over to the bank the amount of this deficiency?

A. I paid that deficiency in two payments; one January 28th, 1863, out of the estate of Theodore Wood, $1,000—about January 28th. I am mistaken; there was but one payment from the estate of Theodore T. Wood direct.

Q. Now, can you give me the dates when you paid the rest of the deficiency?

A. January 28th, 1867, was the last payment. Upon referring to my settlement of Theodore T. Wood's estate, I find that all that deficiency

that these mortgages had been assigned, what disposition would you have made of the money?

(Objected to.)

A. I would not have paid the money; or at any rate paid so that I would have been safe.

Cross-examined by Mr. HAND:

Q. How long were you attorney and solicitor of the Morris County Bank, Mr. Halsey?

A. From the fall of 1860 to 1867.

Q. Who was president during that period?

A. Thomas E. Allen.

Q. When was he elected president?

A. I think it was in 1860; I am not certain about the time I became solicitor.

Q. When did he cease to be president, and who succeeded him?

A. He ceased to be president a short time ago and was succeeded either by Gen. Tyler or a receiver appointed by the court.

Q. Have you given the correct date of the suspension of the bank? Was it not in September, 1861, instead of '59 and '60?

A. I think it was in September, 1861.

Q. Did you and Mr. Allen become solicitor and president of the bank after or before its suspension?

A. I commenced practicing law in August, 1860, and acted as attorney in fact of the bank in regard to some estate or lands in my native village, from that date, and my connection as solicitor of the bank began April 11th, 1861. Mr. Allen's presidency, I think, commenced before the suspension.

Q. Who was the active manager of the bank after its suspension?

A. Mr. Allen and Theodore T. Wood.

Q. In what capacity was Mr. Wood manager?

(Objected to.)

A. He had been its former cashier and one of the largest stockholders, and really the most active man in the bank, and after its suspension he still continued to take an interest in it.

Q. Is he living; and, if not, when did he die?

A. He is dead; died November 30th, 1864.

Q. Who was the attorney of his representative or estate?

A. I was the administrator. I settled his estate.

Q. After the death of Mr. Wood who was the active manager of the bank?

A. Mr. Allen.

Q. What was the condition of the foreclosure suit at the time of Mr. Wood's death?

A. There were answers filed by William N. Wood and Edwin Ford. There had been no reference at the time of his death; one had been ordered, I think.

Q. Between his death and February 1st, 1865, what order or other proceedings were taken in this suit?

65 A. December 7th, 1864, affidavits were filed setting forth his death; his representatives were substituted for him, and a new order of reference was obtained. Next thing was a master's report, made February 20th, as of February 1st.

Q. Who was the master?

A. Vancleve Dalrymple, now judge of supreme court.

Q. Was the property all sold on the same day?

A. I think it was.

Q. Can you give the particulars of the sale?

A. Yes, sir. Conrad Poppenhusen purchased the first two tracts mentioned in L 1, for $70,100; George T. Cobb purchased the third tract in L 1, for $8,250; purchased the west tract (4th), for $2,275; the fifth tract was purchased by Alfred Mills, for St. Peter's Church, for $1,400; the next two tracts were really one and the same, purchased by Messrs. Baker & Lounsbury, for $1,825; next tract purchased by Mr. Bell, for the bank, for $2,550; the last two tracts were not sold at this time nor under this advertisement, if I recollect right.

Q. When were these last two tracts sold?

A. Subsequently by the same master, under another suit.

Q. How and when was the deficiency left after this sale realized?

A. A large amount of Theodore T. Wood's indebtedness was incurred by Mr. T. T. Wood, as indorser for Freeman Wood, and Freeman Wood gave mortgages on all his property to secure that; those mortgages I foreclosed. In that way the deficiency was settled.

Q. When was that foreclosure?

A. There were two or three of them. One of them was advertised for February 22, 1864. I have not the date of sale here.

Q. When was the deficiency paid?

A. It must have been paid after December, 1865.

Q. By whom was the amount of that deficiency paid to the bank?

A. I think I settled it with Mr. Allen.

Q. Who were the complainants in these suits?

A. John Mills was complainant in one, Morris County Bank in one, in another Morris County Bank, and in still another, that was sold and credited on this debt at any earlier day.

Q. How much was the decree in favor of Mills?

A. I was not originally the solicitor in that suit. I think the mortgage was for $10,000; am not certain.

Q. Do I understand you that the bank acquired the right to the monies receivable under this mortgage by the payment referred to in your direct testimony of $9,333.33, payment made by you to Mills?

A. Yes, sir; and in this way. The bank owed Mills that money—borrowed money. He was not satisfied of its safety, and threatened suit, and this mortgage was passed to him as security for that debt, to be surrendered when that debt was paid.

Q. And this foreclosure did not help to make up the deficiency?

66 A. I think it did. A portion of the property embraced in the Mills' mortgage was also embraced in the Freeman Wood mortgage. The sale of the property under the John Mills mortgage was settled about August 1, 1865, and the sale under the Freeman Wood mortgage was closed in the early part of 1865. The Mills property brought $6,810, of which property five-sixths was embraced in the other mortgage, and had been included in the sale under the other mortgage.

Q. Can you now give me the dates when you paid over to the bank the amount of this deficiency?

A. I paid that deficiency in two payments; one January 28th, 1863, out of the estate of Theodore Wood, $1,000—about January 28th. I am mistaken; there was but one payment from the estate of Theodore T. Wood direct.

Q. Now, can you give me the dates when you paid the rest of the deficiency?

A. January 28th, 1867, was the last payment. Upon referring to my settlement of Theodore T. Wood's estate, I find that all that deficiency

was adjusted prior to August 23d, 1865, except the sum of $2,349.91; this was compromised by payment of $1,000. January 28th, 1867, the estate was insolvent.

Q. Do I understand you that all of this deficiency, except $2,349.91, was realized by you out of securities collateral to this mortgage debt, and paid over to the bank by you prior to August 15th, 1865?

A. The bank, as I have stated, had other collaterals in the shape of mortgages to secure the same indebtedness, and a large amount of other indebtedness beside, not properly the debt of Mr. Theodore T. Wood, and they looked to me in the first instance, as administrator of Mr. Wood, to pay this deficiency. I turned over to the bank certain real estate, and was allowed so much for it embraced in these collaterals. I was anxious, as administrator, to settle the estate, and Mr. Allen took the property, some of it embraced in these Rockaway mortgages, at an appraised value, and afterwards disposed of them at private sale for the benefit of the bank. And in that way, prior to August 23d, 1865, I obtained an additional credit on this deficiency of about $6,500, and at that time the deficiency amounted to $2,349.91. How the rest was adjusted I cannot now state, but think it was made up out of the Freeman Wood mortgage.

Q. Was the $6,500 of real estate conveyed by you to the bank, and when?

A. I bid it off at sheriff's sale, and sheriff made a deed of some of it to the bank. I cannot tell when those deeds were given; some were given before, some after, the receipt by me of the eighty-odd thousand dollars.

Q. How do you fix the date August 23d?

A. I have a memorandum of settlement with Mr. Allen.

Q. Did you take part in the settlement of real estate by the bank?

67 A. I made out the deeds. Those sales took place at different periods. Cannot give dates of deeds without reference to the records. Made no minutes of them.

Q. Have you no recollection during what years the sales ran along?

A. I made sales of the property mortgaged to the Morris County Bank from 1862 to as late as 1867.

Q. You speak of Theodore T. Wood's estate being insolvent. Was there a partition of his real estate?

A. No, sir. There was a sale of his undivided interest in Warren County.

Q. Were written terms of sale used for the sale on the 20th of June?

A. There were; and the sale was carried on with utmost care.

Q. Have you here present a copy of those terms of sale? Do you remember what they were?

A. I have not. I cannot give the terms, but am certain percentage was to be duly paid down, and balance of cash was to be paid at delivery of the deed, some two weeks afterwards. I cannot tell with certainty.

Q. Did the master attend entirely to making out the deeds, making the rate, and receiving the purchase-money?

A. He did. He is a resident of Morristown.

Q. How frequently were you in the habit of seeing Mr. Allen in early part of 1865?

A. Almost every day sometimes on the affairs of the bank. Interviews sometimes took place at my house, my office, or at the bank.

Q. Did he talk with you freely respecting the bank?

A. Yes, sir; sometimes; as confidential adviser of the bank, I was familiar with debts and claims against the bank.

Q. Was Cobb a considerable creditor of the bank?

A. No, sir. It owed him at one time $3,000. He had bills of the bank shortly before this sale, if I recollect right.

Q. Was I. Gaston a creditor?

A. Yes.

Q. Was Mrs. N. B. Wood creditor of the bank?

A. She was; her indebtedness for deposits was paid through me to her.

Q. Were creditors of the bank pressing it early in 1866?

A. Yes, sir.

Q. When were these creditors paid off?

A. I paid Samuel Van Ness.

Q. Did E. Ford have judgment against bank?

A. Yes, sir. He was paid by Mr. Allen through Mr. A. Mills.

Q. Were you consulted in 1865 by Mr. Allen, or conversed with by him, concerning debts due from the bank?

(Objected.)

A. Yes, sir; pretty constantly.

Q. Did you know of Mr. Allen's paying a considerable sum in spring of 1865 on account of debts?

(Objected to.)

68 A. He did pay a number of debts of the bank during that summer before this sale.

Q. Did you know of the payment about the time of payment or afterwards?

A. Yes, sir.

Q. You were kept advised by him of payments of debts of bank?

A. He never gave me a schedule of those payments, but would speak of them.

Q. When did you learn of either payment to George T. Cobb?

A. Mr. Allen brought a note of $2,500 to me for my endorsement; with it he paid Cobb. Cannot tell when it was.

(Objected to by Mr. Hand.)

Q. Can you give me any idea of time of endorsement of $2,500 note by you?

A. I cannot.

Q. When was it discounted?

A. At National Iron Bank; paid at maturity, I think, early in 1865.

Q. How much did it amount to when paid?

A. I don't remember.

Q. Did you hear the examination of Allen, and his testimony, on trial between Tyler and him?

A. I heard but little of it.

Q. Did you or not know that in February and March, 1865, Mr. Allen paid from $20,000 to $30,000 of indebtedness of the bank during those months?

A. I didn't know of it at the time. Hadn't an idea he paid so much money. I never knew the amount until his examination before the master.

(What any one testified objected to by Mr. Parker.)

Q. Did you make out statement of the condition of the bank in January or February, 1865, a statement of assets and liabilities?

A. I may have done so, have no recollection now; made verbal state-

ments. I made a verbal statement to Mr. Campbell early in 1865, I think in February, at one of my first interviews with him.

Q. How much did you make out the stock worth?

A. I made it worth thirty or forty per cent. from a general estimate of assets and liabilities.

Q. When first after the sale did you see Mr. Campbell?

A. My impression is—cannot be positive—I think about the 11th of July, 1865?

Q. Did he ask you where the proceeds of the sale were on that occasion?

A. I have a recollection of meeting Mr. Campbell after the sale, and of having a conversation with him something like this; We were
69 talking about the sale and about the money, and I told him the money had not all been paid to me, but that some of it was in the hands of the master. And I think I told him that I had paid some of it to Mr. Allen. Can't give the date, but think it was the 11th of July. Conversation took place along the street, I think.

Q. Were you examined as witness on the trial between Tyler and Allen?

A. Yes, sir.

Q. Did you or not then testify that you told Mr. Campbell that you had not received any money from the master, that the master had the money?

A. I may have done so; I am not certain as to the date when this conversation took place.

Q. The printed record of that trial has been referred to frequently by you to-day in giving your testimony, has it not?

A. I have had that book here and glanced at it three or four times, but have not read my own deposition in it but once since it was printed. I wish to make an explanation of this testimony just referred to. If I saw Mr. Campbell on the day that I paid Mr. Allen the $10,000 check or draft, or he saw me and had any talk about this money on that day, it was true that I hadn't received any money from the master at that time.

Q. What is your present impression, after giving this explanation, as to whether or not on that trial you did testify that you told Mr. Campbell that you had not received any money from the master; that the master had the money?

A. I did so testify then, and am willing to testify so now if it be true that I saw Mr. Campbell at the time that I paid him this check.

(Latter part objected to by Mr. Hand.)

Q. What is your present recollection as to whether on the 11th of July you told Mr. Campbell that the money had not all been paid to you, but some of it was in the hands of the master?

A. I do not say that it was on the 11th of July that I said this, for I cannot possibly fix the date (objected to), but my impression is that I had such conversation with him after the sale and before the master had paid over any of the money to me.

Q. According to your present recollection, had you two conversations with Mr. Campbell between the sale and the receipt of all the money by you from the master?

A. I think I did. Cannot tell the time nor place of those conversations. I think the first conversation took place in front of the store beyond the bank, and was the day I gave Allen the check to pay the State Bank at Newark; I advanced it out of other funds.

(Objected to by Mr. Hand.)

Q. As to the second conversation?

A. I cannot tell you the time nor place, nor how long after the first; cannot tell if it took place in New York.

Q. Who was present at the first conversation besides Mr. Campbel?

A. No one, that I recollect.

70 Q. What was the other fund out of which you paid the money on the 8th?

A. It was money standing to my own individual credit, not derived from the bank nor from Allen.

Q. Did you act as professional adviser of Mr. Allen when the plaintiff Tyler claimed this money from him, and was threatening a suit for it?

A. No, sir; I acted as friend to both parties; tried to settle it.

Q. Did you leave Morristown for the South in 1865?

A. Yes, sir; I spent the month of September, 1865; started South about the 6th of September; returned about the 5th of October, 1865.

(Letter produced by defendant and shown to Mr. Halsey; acknowledged by Halsey to be his handwriting; marked by me Exhibit L A dated Feb. 6, 1867.)

Q. Did you, in February 6th, 1867, have an interview with Mr. Little, in which, on behalf of Mr. Allen, you made a proposition of settlement to Mr. Little, as attorney of Gen. Tyler?

A. I had an interview with Mr. Little in which I made a proposition on behalf of Mr. Allen; cannot tell the date.

Q. What was the proposition?

A. I remember making him one proposition of $10,000 in money, two thousand shares of coal stock, and for him to retain his bank stock. Another proposition, just after judgment was obtained, was for $15,000 in money.

Q. Did you write that letter? (Showing letter which I have marked L B.)

A. I did write it.

Q. What other proposition do you remember making?

A. I made repeated propositions—none of them were accepted—to Mr. Little in the first instance.

Q. On the 1st of January, 1865, of what did the assets of the bank consist?

(Objected to.)

A. They consisted of those mortgages spoken of, several other mortgages, embracing lands in Rockaway and Randolph Townships, land in Newark; the indebtedness forming part of the assets of the bank was due from parties out West; some indebtedness due from parties here.

Q. Did you not know of Mr. Allen's having at command, and using, considerable sums of money about February, 1865?

A. Yes, sir.

Q. Had this question of using those mortgages for raising money been discussed about this time?

A. Yes, sir. Before the board of directors I forbade its being done. No resolution that I know of was passed in regard to them.

Q. You spoke of being instructed to pay certain debts; was that by resolution?

71 A. I do not know.

Q. Did Mr. Allen report the payment of debts from time to time?

A. Not formally.

Q. When Mr. Allen, in February, 1865, or thereabouts, paid off part

of the debt, did he inform you from what source he derived the money with which he paid them?

A. I can't fix the dates, but Mr. Allen told me this (objected to). that Messrs. Monroe and Tyler had furnished him money to buy stock. They wished to get control of the bank, and he took that money to pay debts.

Q. During what period was the subject of raising money on these mortgages discussed?

A. From 1862 to 1865. It was a general suggestion.

Q. Was Mr. Allen a man of good reputation and standing in 1865 in Morristown?

A. Yes, sir; trusted by the community.

(Objected to.)

Q. He had the confidence of the other directors?

A. Yes, sir.

Redirect by Mr. PARKER:

Q. You omitted to answer in your examination-in-chief when you first heard of the assignment of these mortgages; will you please state?

A. I think I first heard it from Mr. Little.

Q. How soon after the death of Theodore Wood were you appointed as administrator?

A. In one or two months.

Q. Where were these mortgages during the prosecution of the foreclosure suit?

(Objected to by Mr. Hand.)

A. In my custody, in my safe.

Q. Was there an assignment spoken of at any time to you; and, if so, with what result?

A. It was spoken of to me with a view of getting capital to start the bank, and Mr. Monroe or Mr. Allen, or both, showed me an assignment prepared by Mr. Monroe. It was an assignment to Mr. Monroe, made out by him. I got very angry about it, and told Allen it never should be done, and tore it up. That is the last I ever heard of any assignment.

Q. When did this bank go into the receiver's hands?

(Objected to.)

A. About two years ago; December 23d, 1867.

Q. Was any money raised by the sale of any property described in either of the mortgages you foreclosed assigned to Monroe, and then to Campbell, further than what was received and paid over during July, 1865, as you have stated?

A. All the property was sold except that in Warren County, already spoken of, and all the money was applied to the payment of this debt.

72 Q. In examining you to-day respecting propositions of settlement which you had made in behalf of Mr. Allen, did not the examiner read to you, to refresh your memory, a letter or letters addressed by Mr. Little to Mr. Campbell?

A. Yes; a letter from Mr. Little to Mr. Campbell.

Q. Did you ever make any proposition of settlement to Mr. Tyler?

A. None, except through his attorney, as I remember.

Q. You were examined at the Morris circuit in May, 1867, and have referred to the printed copy of your evidence during your examination to-day, have you not?

A. Mr. Hand referred me to it.

Q. Were you not examined previously and on the 8th day of January, before a master?

A. Yes, sir.

Q. Please read from the 49th page of your examination, and see if your memory is refreshed as to how often and when you saw Mr. Campbell after the sale and in the month of July, 1865.

(Objected to.)

A. I think I saw Mr. Campbell twice after the sale and before the money was paid over, as I have already stated in my cross-examination.

Q. Did you not then say, "I think I saw Mr. Campbell two or three times here in Morristown at the banking-room. I recollect distinctly seeing him once with reference to the property bringing what I estimated it would. This was shortly after the sale. I don't think the money had yet been paid to me by the master. It was in the early part of July. He asked me if I had yet received the money from the master. I told him no, I had not yet received it. I saw him between the sale and the paying of the money out by me perhaps two or three times. I saw him along the street and at the banking-house; I may have seen him more; perhaps only twice. He asked me if I had received the money; I told him just how the thing stood. At the first conversation I hadn't received any of the money; at the next conversation I told him, I think, that I had received part of it; I told him the master had not paid it all over, but I am not positive about that. I couldn't say whether or not I saw Mr. Campbell on the 9th of July last"?

(Objected to.)

A. I did testify to that at that time.

Recross-examination:

Q. What was the proceeding in which this last testimony of yours was given?

A. It was a rule to show cause why the capias under which Mr. Allen was arrested should not be discharged.

Q. In whose behalf did you testify?

A. I was called in behalf of Mr. Allen.

Q. When was it that you tore up the assignment you spoke of?

A. It was when shown to me, early in 1865. I cannot give the date. It was not executed.

Q. Has any dividend been paid by the receiver to the stockholders?

73 A. Yes, sir; a dividend of ten per cent.

Q. Do you now recollect the resolution of authority to Mr. Allen as to using the property of the board to raise money to pay debts?

A. I do not recollect that resolution, although I believe such a resolution was passed.

SAMUEL S. HALSEY.

Sworn and subscribed this 30th day of April, A. D. eighteen hundred and seventy.

Witness my name and seal, at Morristown, Morris County, New Jersey, the day and year aforesaid.

[L. S.]

STEPHEN H. LITTLE,
Notary Public for New Jersey.

NEW JERSEY, *ss:*

I, Stephen H. Little, a notary public, duly commissioned and sworn, residing at Morristown, Morris County, district of New Jersey, under and by virtue of the act of Congress, do hereby certify that the foregoing testimony was taken before me, under notice, in the suit wherein

Daniel Tyler is complainant and Robert B. Campbell is defendant, in the presence of the counsel of the parties in the said testimony mentioned, and was reduced to writing in the presence of the witness, who then subscribed the same in my presence, and that I am not of counsel or attorney for either of the parties in said deposition and caption named, or in any way interested in the event of the said cause.

In testimony whereof I have subscribed my name and affixed my notarial seal, at Morristown, Morris County, New Jersey, this 30th day of April, eighteen hundred and seventy.

[L. S.] STEPHEN H. LITTLE,
Notary Public in and for New Jersey.

74 Testimony upon the part of the respondent under the 67th rule, taken by and before Henry Morris, special examiner, appointed by and with the consent of respective counsel.

MAY 6, 1871—1½ o'clock.

Present, examiner and counsel for respective parties.

C. A. HAND, esq., counsel for defendant, produces as a witness ROBERT B. CAMPBELL, who, being duly cautioned and sworn, deposes and says:

I reside in the town of Rye, Westchester County; I am the defendant in this cause; in 1865 I was a lawyer for the courts of the State of New York, having my office in the city of New York; I was not an attorney for the courts of New Jersey at all, and never practised in them; I have known the complainant, Daniel Tyler, since 1859 or 1860—1859, I believe; Mr. Carow, an uncle of my wife, married Mr. Tyler's daughter in that year, and I got acquainted with General Tyler about the time of that marriage; I have never been General Tyler's confidential adviser or his counsel.

1. Q. Had you done business at all for him as attorney prior to 1865?

A. I had been applied to by Mr. Carow, for him, to examine the title to some property at Red Bank, New Jersey, which was the house that he afterwards lived in there; I declined to do it, not being sufficiently acquainted with New Jersey laws; he requested me then to find somebody to make the examination, and to overlook the abstract when it came back. I did so, and found a lawyer at Red Bank (I think his name was Robert Allen, I am not certain though) who made the examination and sent back the abstract here and papers which I sent to Mr. Tyler; I had also once had some papers submitted to me relating to some California quicksilver mines; I don't recollect the particulars of that, except that it contained a large amount of printed matter; with the exception of these two occasions I had not acted for General Tyler in the line of my profession at all.

2. Q. In the spring of 1865 where was your office?

A. 16 Wall street, on the floor below where it is now; there were three rooms—one entrance room, occupied by Mr. Jackson, and two inner offices, one occupied by E. B. Norton and the other by myself; I was acquainted with James Monroe at that time, and had known him about a year before; he was a client of Mr. Norton's and had a desk in his office.

3. Q. When and how did you first hear of this matter of a loan that is in controversy?

A. I had heard Monroe and Mr. Norton and Mr. Allen, president of the Morris County Bank, speaking of the bank and what they were

doing to get control of it and pay up its debts, and I was applied to by Mr. Monroe and Mr. Allen somewheres about the 25th of January, 1865, to see if I couldn't find some one who would loan thirty thousand dollars on a mortgage owned by the bank for a very much larger sum, for about a hundred thousand, I think; the statements they made as
75 to the assets and liabilities of the bank, and of the portion thereof owned by Monroe, and the high offers that they made for the accommodations, induced me to ask them for a written statement of the condition of the bank, which I could show to any person who would be likely to loan; they commenced making the statement of the assets, liabilities, &c. Mr. Allen commenced writing out the statement, but it was in such form that I could not understand and explain it, so I sat down and wrote out the facts and figures that they gave me. The paper I now produce is the statement thus written out, which is part in my handwriting, and mostly in Mr. Allen's. This statement is all written in pencil, and written entirely from information given me at that time by Mr. Allen and Mr. Monroe, who were both present.

(The said paper or statement is here offered in evidence and marked Exhibit No. 42 on the part of the defendant, Henry Morris, special examiner, May 6, 1871.)

I took that paper and went and saw Daniel Tyler and showed it to him, and told him what terms Monroe offered for a loan of thirty thousand dollars; I saw him at the office of Charles Carow, stated to him the offer, and showed him this paper, and told him on whose information and how it was made up; he looked at it and said his money was all invested; he made some considerable inquiry in relation to it; he spoke about some three or four minutes, perhaps, before he said his money was all invested; I then got up and held out my hand for the paper which was still in his hands, and he retained it and made some more inquiries about the matter, and then said, "Let Mr. Monroe make me a written proposition." The inquiries that he made were about the terms of the loan. I then took the paper and returned to the office; that was the last I saw of him that day; I saw Mr. Monroe again that afternoon at my office; he came into my office after my return; I reported to him Mr. Tyler's reply and he prepared a written proposition; that was done in my office, dictated by him and written out by me, and is the Exhibit No. 1, marked for identification, entitled "New York, January 27, 1865; proposition of James Monroe to Daniel Tyler for a loan of $30,000," a copy of which is contained in my answer; the endorsement "Mr. Monroe" on the back is in the complainant's handwriting; Mr. Monroe sent Exhibit No. 1 to General Tyler; the next thing that occurred I received a note from General Tyler, dated Saturday p. m., and received by me January 29, 1865, which was Sunday, and it is the letter marked Exhibit No. 2 for identification.

(The said Exhibit No. 2 is here read in evidence.

Exhibit No. 42 and Exhibit No. 1 are also read in evidence.

Defendant's counsel further offers and reads in evidence the letter dated New York, January 30, 1865, from Daniel Tyler to James Monroe, heretofore marked marked Exhibit 3 for identification, and a copy of which is contained in the answer.)

76 4. Q. Do you remember how the letter of January 30th, just read in evidence, was conveyed to Mr. Monroe?

A. It was sent to him directed to 16 Wall street, I think, to my care.

5. Q. What next occurred about the loan?

A. The next that occurred Mr. Monroe handed to me a letter from

Mr. Allen; the paper I now produce is a copy of such letter; I enclosed the original to Mr. Daniel Tyler and kept a copy of it.

(The defendant's counsel here offers and reads in evidence said copy, and it is marked Exhibit No. 43 on the part of the defendant, May 6, 1871, Henry Morris, special examiner.)

6. Q. What next occurred, so far as you are concerned?

A. Next I received a letter, which was a duplicate copy of this (both were in General Tyler's handwriting), from General Daniel Tyler, dated February 8, 1865; it is the letter marked Exhibit No. 28 for identification, and a copy of which is set out in my answer.

7. Q. What next occurred about this matter, so far as you are concerned?

A. After the receipt of this paper, the two propositions were accepted by Mr. Monroe and Mr. Allen, by a written acceptance daten New York, February 8, 1865, addressed by them to the complainant, a copy of which is contained in the answer, and is here read in evidence.

8. Q. What next was done by you or within your knowledge?

A. After the receipt of that acceptance I went to Morristown and saw Mr. Halsey, the solicitor foreclosing these bank mortgages, and made enquiries as to the condition of the suit and the value of the property, and he told me, I think, that the suit was then before the master on some question of priority of sale; that he thought the property would sell for the whole amount of the mortgage. After that the papers were prepared in New York by me; they were as follows:

Agreement between James Monroe and General Tyler, dated February 1, 1865, and being Exhibit A of the complainant's evidence.

Agreement of the same date between the same parties, being Schedule No. 1 annexed to the defendant's answer.

Agreement between James Monroe and Daniel Tyler, dated February 8, 1865, and marked Schedule No. 2 annexed to defendant's answer.

Note of James Monroe and Thomas E. Allen to Daniel Tyler, dated February 8, 1865, and being Schedule No. 3 annexed to defendant's answer.

Assignment by the Morris County Bank to James Monroe, dated February 11, 1865, and being Schedule No. 4 annexed to defendant's answer.

Assignment by James Monroe to the defendant, dated February 11, 1865, and being Schedule No. 5 annexed to the answer.

77 Agreement between James Monroe, Daniel Tyler, and Robert B. Campbell, dated February 11, 1865, and being Exhibit B of complainant's testimony.

Besides these papers there were assignments drawn for four hundred and fifty shares of Morris County Bank stock to Daniel Tyler.

9. Q. What took place between you and General Tyler, if anything, as to the drawing of these papers?

A. The drafts of all the papers, excepting the $20,000 note and the transfer of stock, were submitted to Daniel Tyler for examination and correction by me; then after that, after he had some corrections, they were copied to be executed.

10. Q. Were either of the papers especially requested by him?

A. The agreement dated February 11, 1865, between James Monroe and myself and General Tyler, which is Exhibit B of *of* complainant's evidence, was drawn entirely under directions and explicit instructions received from General Tyler to carry out his own views, and he did not

communicate to me the especial purpose or object he had in having it made.

11. Q. Did he at that time communicate to you the fact that he was having or had had conversations with Mr. Monroe separate or independent from you?

A. He told me that Monroe had agreed to this agreement of the 11th of February, and to other slight variations in the papers. After the execution of the papers the assignments of the mortgages were sent off for execution; one was to be executed by the bank and the other by Monroe; the other papers were executed, all ready for delivery, and on the 14th of February, 1865, all the papers were delivered; the bonds were also delivered at the same time from Tyler to Monroe, and from him to Mr. Allen, as president of the Morris County Bank; this took place at my office and in my presence; there were 43 United States five-twenty bonds for a thousand dollars each delivered; the bonds were delivered to me by Mr. Carow, on behalf of General Tyler, on the 13th of February, 1865; on the 16th of February all the papers excepting the two assignments of mortgage and the instrument dated the 11th of February, Exhibit B on the part of complainants, were sent to General Tyler with a letter.

The further examination in this cause is adjourned to May 13, 1871, at one o'clock p. m.

MAY 13, 1871—one o'clock p. m.

Present, examiner and respective counsel.

On motion of defendant's counsel, the further examination of the witness Robert B. Campbell is adjourned to May 20, 1871, at one o'clock p. m.

MAY 20, 1871—one o'clock p. m.

Present, examiner and counsel for complainant.

The examiner having received a communication from the defendant's counsel that a family bereavement called him away to Philadel-
78 phia, the further examination in this cause is adjourned, on motion, to May 27, 1871, at one o'clock p. m.

MAY 27, 1871—one o'clock p. m.

Present, examiner and counsel for defendant.

On motion, the further examination is adjourned to June 3, 1871, at one o'clock p. m.

JUNE 3, 1871—one o'clock p. m.

Present, examiner and counsel for defendant.

The complainant's counsel not appearing, the further examination of the late witness is adjourned to June 10, 1871, at one o'clock p. m.

JUNE 10, 1871—one o'clock p. m.

Present, examiner and counsel for respective parties.

C. A. HAND, Esq., counsel for defendant, proceeds with the examination of the witness Robert B. Campbell as follows:

(Counsel for defendant here offers and reads in evidence Exhibit No. 4, for identification, and it is correspondingly marked by the examiner.)

12. Q. What next was done by you, or within your knowledge, about this matter?

A. The other paper, Exhibit B, was also sent to the complainant within a few days—two or three days, I think; that was the completion of that part of the business so far as I was concerned.

13. Q. Then what else did you hear or know of this matter?

A. Some time afterwards the complainant sent me a check for forty-five hundred dollars ($4,500), and a note stating that he had loaned that sum to James Monroe, and that he, Monroe, was to give complainant his note for the amount at sixty days, and one hundred shares of Morris County Bank stock as collateral, and asked me to deliver the check on the receipt of the note and the stock; the letter I am unable to find.

14. Q. In whose handwriting is Exhibit No. 41?

A. In the handwriting of the complainant, including the endorsement as well as the face of the paper.

15. Q. Was the receipt of that letter the first knowledge you had of that transaction of the $4,500 note?

A. Yes, sir; it was.

16. Q. Do you remember whose check that was?

A. I think it was Mr. Charles Carow's check.

17. Q. What did you do in pursuance of that letter?

A. I drew a note for $4,500, with interest, from Monroe to the complainant, for sixty days, payable at the office of Charles Carow; Exhibit C is the note. Mr. Monroe came into my office and signed the note and executed a power to transfer the stock, and I endorsed the check to Monroe's order and delivered it to him, and took the note and stock. I put the note and the stock in my safe for the complainant to have when he sent for them or wanted them.

18. Q. About that time did you prepare papers for the reorganization of the Morris County Bank as a national bank?

79 A. I did prepare papers, at the request of Allen and Monroe, to convert said bank into a national bank, and sent them to Mr. Allen, the president of the bank, to be executed.

(Defendant's counsel here offers and reads in evidence Exhibit No. 41, marked for identification, which is here correspondingly marked by the examiner; also a letter from complainant to Monroe, dated April 24, 1865, and marked Exhibit No. 29, for identification, which is also marked by the examiner.)

19. Q. Do you remember when you delivered to the complainant that note and stock?

A. It remained in my safe until some few days after the note was due before he made any inquiries about it.

20. Q. What next occurred in reference to this matter?

A. The property was advertised to be sold on the 5th of June, 1865, at Morristown, New Jersey, that is, the mortgaged premises; the sale was adjourned, I think, until June 20th, at which time most of the property under the mortgage was sold. I was at Morristown on both of those days, and was present during the sale; I was asked to go there by James Monroe. After the sale I reported the amount for which the property sold to the complainant. There was nothing done on the 5th; the sale was adjourned. There was a good deal of talk there among the parties present on that day as to what the property was worth, what it ought to bring, etc.; this was in my presence.

21. Q. Did you have any conversation with the complainant about the sale prior to your going there on those two days?

A. On each of these occasions, a day or two before I left, the complainant came into my office and asked me if I was going to Morris-

town to attend the sale. I told him that I was on both occasions, and after both of the days I wrote to him what had been done—the first time that the sale had been adjourned, and the second time what the property was bid off at.

22. Q. On the 20th of June the property was sold, except what?

A. Except some parcels in which other persons were interested, where there was some question as to title, I believe, and the sale of which was adjourned to some time in July; but I understand it took place in September.

23. Q. What next took place after the sale?

A. Applications were made by Monroe and Allen, I think, for an extension of time in paying the twenty-five-thousand-dollar loan, and allowing the money to be deposited to the credit of the bank. In the mean time the four hundred and fifty shares of the stock were transferred to the name of General Tyler on the book of the bank. I had told General Tyler that I was going to Morristown on the 11th of July, and on the 10th of that month, the day before, he handed me the certificates of the four hundred and fifty shares of bank stock and requested me to have it transferred to his name, telling me that Mr.
80 Monroe had consented to the transfer now, although by the original terms of the agreement it was not to have been transferred until August 1st. I took the stock out there on the 11th of July and left it enclosed for the president, Mr. Allen, to be transferred to the name of Daniel Tyler. Mr. Allen wrote down, stating that he wanted Mr. Monroe to transfer it on the book of the bank in person, and that was done, and new certificates for the stock were sent down to me a few days afterwards, which I sent to the complainant.

(Defendant's counsel here offers and reads in evidence a letter from Monroe to complainant marked Exhibit No. 31, for identification, and also a letter from complainant to the defendant marked Exhibit No. 30, for identification, which letters are here marked in evidence by the examiner.)

These letters Exhibits Nos. 30 and 31 were received by me from the complainant on the day of their date, and were accompanied by by the twenty-thousand-dollar note and contract.

(Defendant's counsel here offers and reads in evidence a letter from the complainant to the defendant, dated August 7, 1865, marked Exhibit No. 32, for identification, and the same is marked in evidence by the examiner.)

Exhibit No. 32 was received by me on August 7, 1865; I showed it to Monroe and I think to Mr. Allen, and the statement asked for in the letter to be made by Mr. Allen was received by me some days afterwards and sent to the complainant; I here produce the statement referred to.

(The defendant's counsel here offers in evidence the statement referred to, and it is here marked Exhibit No. 41 on behalf of the defendant, June 10, 1871, Henry Morris, special examiner.)

24. Q. Do I understand you that you received the $20,000 note from the complainant in his letter to you of July 14, 1865?

A. Yes, sir; that is correct.

25. Q. What was done with or about the note after receiving it?

A. I locked it up in my safe and waited for Monroe and Allen to comply with the terms; I asked Monroe several times for the payment of the $4,500; he promised to pay it, but did not, and never did; I wrote the letter of August 4th, Exhibit G, demanding payment of the $20,000

note by reason of having received from complainant that note with his letter of the 14th of July, and the $4,500 note not having been paid.

The further examination is here adjourned to June 17, 1871, at one o'clock p. m.

JUNE 17, 1871—one o'clock p. m.

Present, examiner and counsel for defendant.

At 1.45 p. m., the complainant's counsel not appearing, the further examination of Mr. Campbell is adjourned to Friday, June 30, 1871, at one o'clock p. m.

81 JUNE 30, 1871—one o'clock p. m.

Present, examiner and respective counsel.

On motion of defendant's counsel, the examination is further adjourned to Friday, July 7, 1871, at one o'clock p. m.

JULY 7, 1871—one o'clock p. m.

Present, examiner and counsel for respective parties.

Mr. HANDS, counsel for defendant, proceeds with the examination of the witness Robert B. Campbell as follows:

26. Q. Was the statement Exhibit 44 exhibited by you to General Tyler, the complainant?

A. As soon as I received it I sent it to General Tyler; nothing further was done about the statement that I know of.

27. Q. Then the letter of the 23d of August, Exhibit H of complainant's testimony, was written, was it?

A. Yes, sir.

28. Q. What knowledge had you of the condition of the monies at the time that letter was written?

A. I had been informed by James Monroe that the money was in the master's hands ready to be paid over.

29. Q. Was that the first knowledge you had that it was ready to be paid over?

A. Yes, sir; it was the first that I had heard.

30. Q. Had you made inquiries prior to that on that subject at Morristown?

A. In July, when I was at Morristown, I had inquired of the attorney in the foreclosure proceedings and he told me that the money could not be paid over then, that the master would need an order from the court; and on my return to New York I sent word to the complainant of what I had heard.

31. Q. When did you first learn the time of actual receipt by Allen from the solicitor of the bank of monies derived from the foreclosure?

A. I first learned it from the testimony of Allen and the bank solicitor in the suit of Tyler against Allen, at Morristown, and I then learned that at the time the solicitor had told me that the money had not been received he had already received the greater part of it, and had given to Allen a large amount of it to pay debts of the bank.

32. Q. At the time of the writing of this letter of the 22d of August what was the reputation or standing of Mr. Allen, the president of the bank?

A. He was considered to be a man honorable and straightforward in his dealings, and of large property.

33. Q. Was he so regarded by you?

A. Yes, sir.

34. Q. Under what circumstances was the letter Exhibit I, of date August 30, 1865, written?

82 A. Negotiations had been going on with General Tyler between Monroe and Allen, I think, too, for the extension of this loan which had not been completed, and I heard Mr. Tyler say that he wanted this matter closed up before he made any further arrangements; that letter was written to hasten the payment of the first loan—the $25,000 loan.

35. Q. Just go on and state what had occurred between you and General Tyler on the subject mentioned in that letter.

A. I had met the general a few days before at Red Bank, and he had asked me if I would go to Morristown and get the money on this $25,000 loan, and I declined to go.

36. Q. What next occurred after the sending of that letter of the 30th of August about this loan?

A. On the first of September General Tyler and Mr. Allen met in my office, without any appointment by or with me; they both arrived about the same time, and just after I got to the office; Mr. Allen told General Tyler at that interview that the money proceeding from the foreclosure had been received and paid out a long time before, and before he had received my first note of August 22d; that was the first intimation that I had of his having received the money, or that the money had been paid over.

37. Q. Between whom was the conversation on that day?

A. Almost entirely between Allen and Tyler.

38. Q. What was the tenor of it beyond what you have stated?

A. The principal fact of the paying out the money by Allen was the chief theme, and the general tried to get some explanation of it from Allen, but did not succeed in getting any satisfactory explanation.

39. Q. Did Allen make any statement as to what he had paid it out for?

A. I think he stated that it had been paid to the creditors of the bank, but he did not enter into particulars.

40. Q. Was the conversation an angry one between the two?

A. It was one of considerable excitement, but not noisy, not loud; Allen saying as little as he could.

41. Q. Did Allen volunteer any reason or excuse for applying the money to the payment of other debts without any reference to the claims of complainant?

A. I think he gave no explanation, but merely rested on the statement that the money had been paid out.

42. Q. Did General Tyler have this statement Exhibit 44 with him on that interview?

A. I don't know that he had it with him or not.

43. Q. State the result of the interview, if there was any.

A. Allen left first, and General Tyler then said that he saw that Allen had been trying to cheat him, and asked me to look out for the best lawyer that I could find to take care of his interests and get the money back to him.

44. Q. Did anything else occur about these matters on that day?

83 A. James Monroe came in the office that afternoon and gave me an order on Allen to transfer to me all the stock of the Morris County Bank that he was interested in, to secure this $25,000 claim, which order, on the day afterward, I presented to Allen, and he

refused to transfer the stock; the papers I now produce are the order and the refusal.

(Said papers are here offered in evidence, and they are marked Exhibits Nos. 45 and 46 for defendant, July 7, 1871, Henry Morris, special examiner.)

45. Q. You spoke of propositions between complainant and Monroe; is this paper one of them?

A. This is a copy of one of them, the original of which I received and sent to General Tyler and have not seen it since.

(Said paper is here offered in evidence, and the same is marked Exhibit No. 47 for the defendant, July 7, 1871, Henry Morris, special examiner.)

46. Q. When was the request referred to in that letter of September 6, 1865, Exhibit K, made by you?

A. It was made on the 2d of September, at Morristown, at the same interview that I presented Monroe's order for the transfer of stock.

47. Q. For whose account was that order taken?

A. For the account of General Tyler, to protect him on the $25,000 indebtedness.

48. Q. What, if anything, did you do in fulfillment of the request of the complainant as to retaining counsel in New Jersey for him?

A. I made inquiries as to the best counsel in New Jersey to take charge of such a case, and I was referred to Mr. Theodore Little, of Morristown, as the best man; I then went to Morristown and saw him, and put him in possession of the facts of the case, and he consented to act for General Tyler; I subsequently sent him the original assignment of mortgage and copies of all the other papers that I had; after my first interview with Mr. Little I wrote the letter Exhibit No. 5.

49. Q. When did you send the papers to Mr. Little?

A. On the 8th of September, and on the 9th I wrote the letter Exhibit No. 6 to General Tyler.

50. Q. What next did you do about the matter?

A. On the 11th of September I went to Morristown and saw Mr. Little, and on the 12th I wrote to General Tyler the letter of that date, Exhibit No. 7.

51. Q. Does that letter contain a true report of what occurred between you and Mr. Little on the 11th?

A. Yes, sir.

52. Q. What next occurred?

A. Mr. Little said he would be down in town on the 14th, and would be at my office between 12 and 1 o'clock, and I wrote to
84 General Tyler letter Exhibit No. 8, stating that Little would be there, and asking him to be present also; I received on the same day letter Exhibit No. 33.

(Said exhibit is here offered and read in evidence, and is marked by the examiner accordingly.)

On the 18th of September I received this letter Exhibit No. 34, marked for identification.

(Said last exhibit is here offered and read in evidence, and is marked by the examiner accordingly.)

53. Q. What was the interview with Monroe referred to in the letter Exhibit No. 34; or what was the subject of the interview?

A. The subject of the interview with Monroe was with regard to paying off the $25,000 indebtedness; one plan was to sell a large quantity of the bank stock to parties whom he said were anxious to buy it, who

would then have control of the bank; to effect this General Tyler would have to join and transfer the 550 shares in his hands, and get his pay out of the proceeds of the sale; the particulars of that offer are stated in Exhibit No. 9, my letter of September 21st, 1865, to General Tyler.

54. Q. Was that offer accepted?

A. I understood him that he was willing to accept it, but it was never carried through; I received the letter Exhibit No. 35 on the 25th of September.

(Said exhibit is here offered and read in evidence, and is marked accordingly by the examiner.)

55. Q. Did you receive the letter I now show you; if so, when, from whom, and in whose handwriting is it?

A. I received it October 2, 1865, from Daniel Tyler, and it is in his handwriting.

(Said letter is here offered and read in evidence, and is marked Exhibit No. 48, for defendant, July 7, 1871, Henry Morris, special examiner.)

56. Q. Was the letter of October 26, 1865, Exhibit No. 11, written by you to General Tyler?

A. It was, and also Exhibit No. 12, of October 27, 1865, and both of them were sent on the days of their date.

57. Q. Were these letters correct reports of what had transpired about this business?

A. They were; also the same is the case with the letter Exhibit No. 13, dated Nov. 2, 1865, but the name "Mr. Allen" in the copy should be "Mr. Little."

58. Q. Was the paper I now hand you received by you; if so, when, and what did you do with it?

A. This paper was received by me November 1, 1865; it is a letter from James Monroe for Daniel Tyler; it is in the handwriting of Monroe.

85 (The said letter is here offered and read in evidence, and it is marked Exhibit No. 49 for defendant, July 7, 1871, Henry Morris, special examiner.)

59. Q. Did you receive the letter marked Exhibit No. 36?

A. I did, on the 6th of November, 1865.

(Said letter is offered and read in evidence, and marked accordingly by the examiner.)

I also received on the 11th of November the letter Exhibit No. 37.

(Said exhibit is here offered and read in evidence, and marked accordingly by the examiner.)

And on the 13th of November, 1865, I received the paper I now produce from General Tyler, together with his affidavit in the case of Tyler against Allen; said paper is in the handwriting of the complainant.

(Defendant's counsel here offers the papers referred to in evidence, and the same is marked Exhibit No. 50 for defendant, July 7, 1871, Henry Morris, special examiner.)

60. Q. Did you write the letter dated November 10, 1865?

A. I did, and sent it the same day to General Tyler, together with the enclosure referred to, an affidavit, and copy of a letter from Mr. Little.

61. Q. Did you obtain judgment in New York against James Monroe in behalf of Daniel Tyler?

A. I obtained two judgments in New York, in the supreme court in

the city of New York, in favor of Daniel Tyler against James Monroe, both entered on November 22, 1865; the complaints of both were sworn to by the plaintiff on the 1st of November, 1865, one for $26,303.34 on the $25,000 indebtedness, and the other for $4,701.88 on the $4,500 note; these papers I now produce are office copies of the judgment-rolls in both cases.

(Defendant's counsel here asks that the said copies may be marked for identification, and they are marked Exhibits Nos. 51 and 52, for identification, July 7, 1871. Henry Morris, special examiner.)

The further examination in this cause is adjourned to July 14, 1871, at 11 o'clock.

JULY 14, 1871—11 o'clock a. m.

Present, examiner and counsel for complainant.

Mr. HAND, counsel for defendant, proceeds with the examination of the witness Robert B. Campbell as follows:

62. Q. In whose handwriting is the letter I now show you?

A. In the handwriting of Theodore Little, of Morristown, the counsel of General Tyler in the suit of Tyler against Allen; it is
86 dated September 26, 1865, and was received by me September 28, 1865, and was sent by me to General Tyler on the day of its receipt.

(Defendant's counsel here offers said letter in evidence, and the same is marked Exhibit No. 53 for defendant, July 14, 1871, Henry Morris, special examiner.)

63. Q. In whose handwriting is the letter I now show you?

This letter is in the handwriting of Theodore Little, dated October 3, 1865, addressed to and received by me October 5, 1865, and sent by me on the same day to the plaintiff Tyler.

Said letter is offered in evidence by defendant's counsel, and is marked Exhibit No. 54 for defendant, July 14, 1871, Henry Morris, special examiner.

64. Q. What is the paper I now show you?

A. This is a copy of a letter sent by me to Theodore Little on October 6, 1865, the day it bears date.

(Defendant's counsel here offers said copy letter in evidence, and it is marked Exhibit No. 55 for defendant, July 14, 1871, Henry Morris, special examiner.)

65. Q. Had you an interview with complainant preceding the writing of that letter?

A. I had an interview with the complainant prior to the writing of Exhibit No. 55, and he instructed me to write as I wrote in this exhibit.

66. Q. In whose handwriting is the letter I now show you?

A. In that of Theodore Little; it is dated October 21, 1865, and addressed to and received by me October 23, 1865, and handed by me to the complainant the same day.

(Defendant's counsel here offers in evidence said letter, Exhibit No. 56 for defendant, July 14, 1871, Henry Morris, special examiner.)

67. Q. What occurred between you and the complainant with regard to the letter Exhibit No. 56, upon your handing it to him?

A. He did not approve of the propositions mentioned in that letter, and directed me to so inform Mr. Little; he declined to entertain the proposition, and in accordance with his instructions I wrote a letter to Mr. Theodore Little, of which the paper I now produce is a copy.

(Defendant's counsel here offers in evidence said copy of a letter, and it is marked Exhibit No. 57 for defendant, Henry Morris, special examiner.)

The decision stated in the letter Exhibit 57 was made by the complainant himself, without submitting it to my judgment or receiving suggestions from me.

68. Q. What is the paper now shown you?

87 A. This is a copy of a letter written by me to Theodore Little, at the direction of General Tyler after an interview with him, dated October 31, 1865, and mailed the same day.

(Said copy is here offered in evidence, and marked Exhibit No. 58 for defendant, Henry Morris, special examiner.)

The statement contained in Exhibit No. 58 of what Mr. Little was going to do was based on information received by me from General Tyler.

69. Q. State generally, with regard to your action and correspondence with Mr. Little, what your position was from the time of Mr. Little's being retained.

A. Everything that I did in the matter was under special instructions from the complainant; every letter that I received was sent or shown to him; every fact that came to my knowledge was communicated to him; any questions to be passed upon he decided.

70. Q. By whom was the letter now shown you written?

A. This was written by the complainant to me, and is dated December 11th, 1865, and received by me on the same day.

(Said letter is offered in evidence, and marked Exhibit No. 59 for defendant, July 14, 1871, Henry Morris, special examiner.)

Letter Exhibit No. 17 is my answer to it.

71. Q. At the time these last two letters were written where was the $25,000 contract?

A. In the complainant's possession; it had remained in his possession since February, 1865; at any rate I had not had it since that time.

72. Q. After the writing of these two letters was any change made, and, if so, what, in the management of the claims or the proceedings upon them?

A. Mr. Little wrote directly to the complainant, and not through me, as he had often done before; he had frequently before had interviews with him at which I was not present, and had also corresponded directly with him; Mr. Little made his communications more exclusively to the complainant after that time.

73. Q. In whose handwriting is the letter now produced?

A. In the handwriting of the complainant; it is dated April 10, 1866, and received by me the same day.

(Defendant's counsel offers said letter in evidence, and it is marked Exhibit No. 60 for defendant, July 14, 1871, Henry Morris, special examiner.)

74. Q. In whose handwriting is the letter now shown you?

A. This is in the handwriting of the complainant to me, dated September 27, 1866, and received by me on the same day.

(Said letter is offered in evidence, and marked Exhibit No. 61 for defendant, July 14, 1871, Henry Morris, special examiner.)

88 75. Q. By whom was the letter now shown you written?

A. This letter, dated September 1, 1866, was written by Theodore Little to me, and was received September 3, 1865.

(Said letter is offered in evidence, and marked Exhibit No. 62 for defendant, July 14, 1871, Henry Morris, special examiner.)

The stock referred to in the letter Exhibit No. 62 is the 100 shares of Morris County Bank stock received by complainant from Monroe with the $4,500 note; I communicated Exhibit No. 62 to the complainant.

76. Q. By whom was this letter written?

A. The letter now produced, dated February 13, 1867, was written by Theodore Little to me, and was received on the 15th of February, and was by me sent to the complainant on the same day.

(Said letter is here offered in evidence, and is marked Exhibit No. 63 for defendant, July 14, 1871, Henry Morris, special examiner.)

77. Q. What, to your knowledge, was done by the complainant respecting the letter Exhibit No. 63?

A. The letter was received by the complainant, and on the 18th of February returned to me with written instructions from him; these instructions I forwarded to Mr. Little, and have no copy of them; about that time, Mr. Halsey, of Morristown, had also called upon me, and in behalf of Thomas C. Allen endeavored to make a compromise of the controversy between the complainant and Allen, and I declined, as not having any authority in the matter, and referred him to Mr. Little, as counsel for complainant in that suit, and so reported to the complainant and to Mr. Little.

78. Q. Prior to the making of the loans by the complainant did you make any statement to the complainant about Monroe being a man of means, or responsible, or owning a house in the city of New York?

A. I did not.

79. Q. Did you make any agreement with the complainant about acting in his behalf, or relieving him from labor, or undertaking the management of the loan, except as your position was defined in the writings?

A. I did not; in my previous testimony I have given the precise history of the making of the loan, and my action in regard to it, to the best of my knowledge and recollection, and I did not undertake any duty or obligation except those defined by the papers.

80. Q. Was the $4,500 advanced through you?

A. I knew nothing of the transaction until the check was sent to me, with the instructions as I have already testified.

81. Q. When did you first receive authority from the complainant to receive payment of the $4,500 note?

A. When he called for it a short time after it was due.

89 82. Q. Did you make any statement to the complainant about the master's retaining the money thirty days?

A. No, sir; my statement to him on that subject is contained in my letter of the 12th of July, 1865; I had stated to him before at what time, by the terms of the sale, the title was to be passed.

83. Q. Did you state to the complainant that it was not possible for Allen and Monroe to get the money paid for the mine outside of you?

A. I did not; the complainant asked me one day, at Red Bank, if it were possible that Monroe could get hold of the money arising from the foreclosure; I told him that I could not see how he possibly could unless he stole it; nothing was said about Allen at that time, and he did not then exhibit to me any suspicion of Allen; this took place one time when my family called to see Mr. Tyler's family; I was staying near Red Bank at the time for about a month, boarding; the conversation prior to this had been entirely of other matters, not business, when the complainant incidentally asked me this question; this was in August, 1865, about the middle, or perhaps a little later than the middle.

84. Q. Up to the 1st of September, 1865, was any doubt of the integrity or responsibility of Mr. Allen communicated to you by the complainant or any one else?

A. No, sir.

85. Q. Did you inform the complainant of the money having been received and paid out by Allen?

A. No, sir, I did not; the first information I received of that fact was in complainant's presence on the 1st of September, as I have already testified.

86. Q. Was the suit brought by the complainant against Mr. Allen, personally, brought by your advice?

A. It was not; I had nothing to do with advising how the suit should be brought, and was not consulted; it was brought entirely under the advice of Mr. Little, as I have already testified.

87. Q. By whose advice were the suits in New York brought against Monroe?

A. These were also brought under Mr. Little's advice, and under the direction of the complainant; in reference to both these suits I gave all the information and assistance that was in my power, but all questions regarding them were submitted to Mr. Little and the complainant, and determined by them; one object of the New York suits was, as stated by Mr. Little to me, to prevent the interposition of the defense of usury in the suit in New Jersey against Allen.

88. Q. By whom was Mr. Little's retainer paid when first retained?

A. It was advanced by me in the first instance, and refunded by the complainant a few days afterward.

89. Q. On the 10th of July, 1865, what was the subject of your interview with the complainant?

90 A. That is the day when he brought me the 450 shares of bank stock to be tranferred, and asked me to get it transferred to him, and that was the subject of the interview.

90. Q. On the 14th of July, 1865, what was the subject of your interview with the complainant?

A. On that day I received a certificate for the 450 shares of Morris County Bank stock, and transferred to his name, and when he came in I delivered the certificate to him, together with the letter accompanying it, but I have a copy of it, which I now produce.

(Said copy is here offered in evidence, and is marked Exhibit No. 64 for defendant, July 14, 1871. Henry Morris, special examiner.)

91. Q. On the 24th, 25th, and 26th days of July, 1865, did you have any interviews with the complainant?

A. I did not see him on either of those days; I was in town on the 24th, but was not in my office except for a very few minutes in the afternoon, and was not at the office at all on the 25th and 26th, but was out of town.

92. Q. Did you ever tell the complainant after the sale that the money was secure, and that you would get it as soon as the usage of the law permitted, or that the master was entitled to keep it thirty days?

A. I did not; I did tell him the amount the property was bid off for, and the time when by the terms of the sale the money was to be paid.

93. Q. Did the complainant tell you he would not make the loan unless you would agree to draw all the papers and take the entire charge of the transaction?

A. He never told me anything of the kind.

94. Q. Did Mr. Monroe have an interview with the complainant in your office?

A. Not to my knowledge or in my presence, and not by any appointment of mine.

The further examination is adjourned to July 21, 1871, at 11 o'clock, a. m.

JULY, 31, 1871—11 o'clock, a. m.

Present, examiner and counsel for defendant.

Mr. HAND, counsel for defendant, proceeds with the examiaation of Mr. Campbell as follows:

95. Q. Were you at the house of the complainant on the 25th of August, 1865?

A. I think not; I was in New York on that day and did not get back to Red Bank until evening.

96. Q. Did you on that or any other day tell him that you had taken the necessary steps to secure the loan?

A. I did not.

97. Q. Did anything, and, if so, what, occur between you and
91 Mr. Halsey respecting the assignment to you of the mortgage or proceeds of foreclosure?

A. On two occasions I told him that the mortgages were hypothecated to me; both of those occasions were prior to the sale of the property one of these occasions was on the day on which the property was first advertised to be sold, and the other on the day on which the property was sold, but before the sale.

98. Q. Were you present at the trial of the suit by complainant against Thomas E. Allen, at Morristown, and was Mr. Halsey examined as a witness on behalf of defendant Allen?

A. I was present at that trial, and Mr. Samuel S. Halsey was examined as a witness for the defense.

99. Q. Did you hear his testimony on that trial?

A. I did.

100. Q. Did he testify on that trial that he thought on the day you were there and met Allen, the day Allen paid the State Bank at Newark, he, Halsey, told you he had not received any money from the matter?

A. He did so testify and it is so reported in the printed testimnoy of that case.

101. Q. Have you received any money in this matter from any person except the $20,000 which you immediately paid over to the complainant?

A. I have not.

102. Q. Have you received any compensation from any source for any part of your service in the matter?

A. I have not; I received from Monroe the money to pay for the government stamps on the assignments of the mortgage, but otherwise I have not been paid at all.

103. Q. Has the complainant ever offered to pay you for any services in this matter?

A. No, sir.

104. Q. Or acknowledged any liability for them?

A. He has not.

The further examination of this witness is adjourned to July 27, 1871, at one o'clock p. m.

92 Direct examination closed.

The further examination of the witness is adjourned to July 27, 1871, at one o'clock p. m.

JULY 27, 1871—one o'clock p. m.

Present, examiner and counsel for respective parties. At request of complainant's solicitor the further examination in this cause is adjourned to Sept. 15, 1871, at one o'clock p. m.

SEPT. 15, 1871—one o'clock p. m.

Present, examiner and counsel. The further examination in this cause is set down for Sept. 22, 1871, at one o'clock p. m.

SEPT. 22, 1871—one o'clock p. m.

Present, examiner and counsel for defendant. On motion, the further examination in this cause is adjourned to Sept. 29, 1871, at one o'clock p. m.

SEPT. 29, 1871—at one o'clock p. m.

Present, examiner and counsel for defendant. No one appearing on behalf of the complainant, the further examination in this cause is adjourned to October 13, 1871, at one o'clock.

OCTOBER 13, 1871—one o'clock p. m.

Present, examiner and counsel for defendant. Owing to the absence of the complainant's counsel, a further adjournment is had until October 27, 1871, at one o'clock p. m.

OCTOBER 27, 1871—one o'clock p. m.

Present, examiner and counsel for defendant. In the absence of complainant's counsel, the examination of Mr. Campbell is further adjourned to November 17, 1871, at one o'clock p. m.

NOVEMBER 17, 1871—one o'clock.

Present, examiner and defendant's counsel. The further examination of the witness is adjourned to Dec. 17, 1871, at one o'clock p. m.

DECEMBER 17, 1871.

Present, examiner and counsel for defendant. Adjournment continued to January 27, 1872, at 10½ o'clock a. m.

JANUARY 27, 1872—10½ o'clock a. m.

Present, examiner and counsel for respective parties. On motion of complainant's counsel, the further examination in this cause is adjourned to February 5, 1872, at 11 o'clock.

FEBRUARY 5, 1872—at 11 o'clock a. m.

Present, examiner and counsel for respondent. On motion of counsel for respective parties, the further examination in this cause is adjourned to such time as Mr. Cortlandt Parker, the senior counsel for complainant, shall notify the respondent's counsel.

APRIL 27, 1872—12 o'clock.

Present, Henry Morris, special examiner, and counsel for respective parties.

CORTLANDT PARKER, Esq., proceeds to cross-examine the witness Mr. Robert Campbell as follows:

93 105. X Q. When and how did you first learn of the situation and circumstances of the Morris County Bank referred to in your examination?

A. My information was received from Mr. Allen, its president, and Mr. Monroe, about and shortly before the time of the first application to General Tyler for a loan.

106. X Q. Was any arrangement made at any time by yourself with Monroe and Allen, or either of them, or any other person, whereby you became interested in the resuscitation of that bank?

A. Never of any kind.

107. X Q. In what capacity did you act in soliciting and effecting the loan from Gen'l Tyler, and in the visits you paid to Morristown in and about the affairs of that bank?

(Objected to by respondent's counsel, as the question asks for a conclusion of law.)

A. I presented the application to Gen'l Tyler because I thought he might make money out of it; I went to Morristown to make inquiries of Mr. Halsey at the request of both Tyler and Monroe, and subsequently, prior to the 1st of September, 1865, at the request of Monroe, and also on one occasion I took some stock to be transferred to him at the request of Gen'l Tyler.

108. X Q. You drew papers, did you not, for the resuscitation of the Morris County Bank as a national institution, and attended to other business directed to that end?

A. At the request of Mr. Monroe and Mr. Allen I prepared the papers to convert the Morris County Bank into a national bank, but attended to no other business directed to the end of resuscitating the bank.

109. X Q. (Paper shown to the witness and he is asked:) Is this a letter of yours addressed to Mr. Allen?

A. Yes; it is.

(Complainant's counsel here offers said letter in evidence, and it is marked Exhibit M on the part of the complainant, Henry Morris, special examiner, April 27, 1872.)

110. X Q. In the work you did respecting the loan and the bank were you not professionally employed for some one? If yea, please state for whom.

A. In the matter of the loan I was employed by Mr. Monroe, and looked to him for my pay; in the matter of the bank I considered that I was employed by the bank.

111. X Q. You were sworn once in the trial in New Jersey between Daniel Tyler and Thomas E. Allen; did you not there say, "In making this loan I acted for Monroe, but not in any other matter; in this I acted for both Monroe and Tyler; I did not come out to Morristown as attorney for Monroe; I suppose I was at the Morris County Bank four times before the sale, but I never represented myself as Monroe's attorney; I came out in January to inquire about the mortgages for Gen'l Tyler"?

A. I believe I did.

112. X Q. That was true then?

94 A. Yes, sir; that is true.

113. X Q. You state that in the loan matter you regarded yourself as employed by Mr. Monroe; in matters relating to the bank, by the institution. What was the character of the compensation you were to receive; money exclusively, or an interest in the bank, and, in either case, was it definite or contingent upon success?

A. In neither case was anything ever said about the character or amount of the compensation; I expected to be paid in money exclusively, without reference to any contingency.

114. X Q. Had not the bank then stopped business?

A. Yes, I so understood.

115. X Q. Who was its president during that time?

A. Thomas A. Allen.

116. X Q. (A paper is now shown to the witness and he is asked:) In whose handwriting is it; did you receive it; was it ever in Gen'l Tyler's hands, and how and when did it get there, if you know?

A. This note is in Thomas E. Allen's handwriting; I received it Sept. 6, 1865; the endorsement on the back and at the top is in my handwriting, and I sent this to Gen'l Tyler immediately on receipt.

(The paper is here offered in evidence, and it is marked Exhibit N on the part of the complainant, Henry Morris, special examiner, April 27, 1872.)

117. X Q. Of what is Exhibit N a statement, and why was it made to you?

A. It purports to be a statement of purchases of stock bought after February 14, 1865, by Mr. Allen; I don't know why it was sent to me; I never asked it.

118. X Q. What is the meaning of the entries on Exhibit N, "Paid James Monroe to the order Eli P. Norton, $5,000;" "R. B. Campbell, $20,000;" and the deduction from the amount formed by adding the purchases of stock to those two items of $35,000, stated to be received from Monroe?

A. I have no knowledge of the meaning of those entries except what inferences I can draw from what is written; the item "R. B. Campbell, $20,000," I suppose refers to the payment of his and Monroe's note to Gen'l Tyler of $20,000.

119. X Q. Is that all the information you can give of it?

A. It is all the knowledge I have of it.

120. X Q. Did not the item $5,000 stated to be paid James Monroe to the order of Eli P. Norton refer to a check for that amount to that order, given by Allen, and which you handed over to Monroe?

A. I never knew of any such check, and I never handed it to Monroe.

121. X Q. Who was Eli P. Norton?

A. He was at one time solicitor of the Court of Claims, and
95 at one time he was my partner, but was not any time in 1865; at this time he had one of the same suite of offices that I had.

122. X Q. Was he not, during 1865, in frequent intercourse with yourself, Monroe, and Allen in relation to the Morris County Bank business?

A. He was not in frequent intercourse with me about it; I don't know how it was with Monroe and Allen.

123. X Q. Had he not intercourse with you during that time respecting that business?

A. I have no recollection of having any intercourse with him whatsoever in reference to any Morris County Bank business; if you include in your question matters relating to the loan to Monroe, I had frequent

conversations with him before it was carried through, and conversed with him occasionally afterwards about it.

124. X Q. Did you not receive a check for $5,000, dated July 28, 1865, given to the order of Norton, and made by Thomas E. Allen?

A. I did not.

125. X Q. Did you not know on or about that day that such a check had been delivered to Norton for you in part payment of the moneys, or some of them, coming to Tyler from Allen, of the Morris County Bank?

A. I did not, and never have known it.

126. X Q. Did you not shortly after that date tell Thomas E. Allen that you had received such a check, or had received Monroe's check instead of it?

A. I never at any time told Thomas E. Allen that I had received such a check, or that I had received Monroe's check instead of it.

127. X Q. Did you not tell him that "Monroe wanted to use the money, and that he took and drew his own check in place of it," or words to that effect?

A. I never did.

128. X Q. Did you not tell Theodore E. Allen, a son of Thomas E. Allen, that Monroe brought the check to you, and wished to borrow it, and that you took his check for ten days, which had not been paid?

A. I did not.

129. X Q. Did not Monroe give you his check for $5,000 in the latter part of July or the first of August, 1865?

A. In the latter of July or the early part of August, 1865, Monroe brought me or offered me his check for $5,000, and I asked him if it was good; he told me it was not, and I declined to receive it.

130. X Q. What was done with that check?

A. He laid it down on the table and went out.

131. X Q. What became of it?

A. I had it for some time, and I presume I have it yet.

(Complainant's counsel here requests the witness to produce the check, if possible, at the next meeting.)

96 132. X Q. For what did Monroe propose to give you that check?

A. I understood that it was to be applied to the $4,500 note.

The further examination of the witness is adjourned to May 2, 1872, at 12 o'clock.

MAY 2, 1872.

Present, examiner and counsel for respective parties.

Mr. CORTLANDT PARKER, counsel for complainant, proceeds with the cross-examination of the witness Robert B. Campbell as follows:

133. X Q. I asked you at our last meeting to find check of James Monroe about which was inquiry; will you be kind enough to produce it if you have found it?

A. The paper I now produce is the check.

(Complainant's counsel offers said check in evidence, and it is here marked Exhibit O for the complainant, Henry Morris, special examiner, May 2, 1872.)

134. X Q. Was the note for $4,500, Exhibit C on the part of the complainant, presented when it became due at the place where by its tenor it was payable?

A. It was not; it was payable at the office used by Gen'l Tyler.

135. X Q. It was in your hands at this time?

A. It was in my safe; Gen'l Tyler had not called for it.

136. X Q. Was it not left with you for collection?

A. It was not.

137. X Q. Simply then with you, by omission of Gen'l Tyler to ask for it?

(Objected to by defendant's counsel as calling for inferences.)

A. It remained in my possesion because Gen'l Tyler neglected to take it.

138. X Q. How did it get in your possession?

A. I have explained that matter fully in answer to the questions from 13 to 17, inclusive, in my direct examination.

139. X Q. The paper I now show to you, and dated Sep't 6, 1865, is it in your handwriting, and did you deliver it to the person to whom it is addressed on or about the date of its date?

A. That paper is in my handwriting, and was delivered to Mr. Little, counsel for Mr. Tyler in the suit against Allen: it was drawn at Mr. Little's suggestion, and given or left with Mr. Little, and whether he delivered it to Mr. Halsey or not I do not know: it was to be delivered to Mr. Halsey at Mr. Little's discretion: it was to be used by Mr. Little at his own discretion.

(The paper referred to is offered in evidence, and it is here marked Exhibit P for complainant, Henry Morris, special examiner, May 2, 1872.)

140. X Q. The paper I now show to you, dated October 4, 1865, is that a letter you sent to Mr. Little?

A. Yes, sir: that is a letter I sent to Mr. Little, and posted on the 6th of October, 1865: it is my handwriting.

97 (Said letter is here offered in evidence, and marked Exhibit Q for complainant, Henry Morris, special examiner, May 2, 1872.)

141. X Q. Look at the paper now shown you, and state if that is a letter of yours to Gen'l Tyler, dated July 16, 1867.

A. Yes, sir.

142. X Q. Can you produce the communication by Gen'l Tyler to which that letter was a reply?

A. I presume I can.

The further examination of the witness, Robert B. Campbell is adjourned to Saturday, June 28, 1872, at 12 o'clock m.

JUNE 28, 1872—12 o'clock m.

Present, examiner and counsel for respective parties.

Complainant's counsel proceeds with the cross-examination of Robert B. Campbell as follows:

143. X Q. Will you please produce the communication from Gen'l Tyler to you to which yours of July 16, 1867, was, as you say, a reply?

A. I haven't been able to find that paper, but think I must have given it to my counsel.

(Complainant's counsel asks defendant's counsel to produce said communication if in his possession.

Defendant's counsel produces the paper called for.

Complainant's counsel here offers the communication of Gen'l Tyler referred to, and also the reply of Mr. Campbell, dated July 16, 1867, in evidence, and they are here marked Exhibits R and S, respectively, for complainant, June 28, 1872, Henry Morris, special examiner.

Defendant's counsel objects on the ground that the letter of com-

plainant was written long after the matters in question had occurred, and after litigations respecting them, and is an unauthorized statement of inferences and of matters asserted by him, as occurring between himself and the defendant, and between himself and others, with regard to which matters he has already been examined as a witness under oath, and that the same is not evidence, and the reply of the defendant contains no admission of the truth of his statement, and neither of them are admissible as evidence.)

144. X Q. Look at the paper now shown you, dated June 4, 1868; did you receive that letter from Gen'l Tyler, and is this, dated June 5, 1868, your answer?

A. Yes, sir.

(Counsel for complainant offers in evidence the two letters referred to in last question, and the same are here marked respectively Exhibits T and U for complainant, June 28, 1872, Henry Morris, special examiner.

Counsel for defendant object to the reception of Exhibits T and U in evidence as irrelevant and not evidence.)

98 145. X Q. Please look at this letter, dated July 27, 1868; was it received by you from Gen'l Tyler?

A. It was received July 29, 1868.

(Complainant offers said letter in evidence, and it is here marked Exhibit V for complainant, June 28, 1872, Henry Morris, special examiner.

Defendant's counsel objects to the exhibit as not evidence of its statement nor of a tender.)

146. X Q. You state in your examination-in-chief that Mr. Little's retainer was advanced by you in the first instance, and refunded by the complainant a few days after; was not the fact this: That you apprised Mr. Charles Caron, the general agent sometimes, or confidential friend, of Gen'l Tyler, that you desired that money, and that he paid it to you in the absence of complainant, and without his knowledge?

A. No, that was not the fact; my communications were direct with Daniel Tyler.

147. X Q. Do you mean that you asked him in writing for the money and received it?

A. Whether I told him personally or in writing I do not now recollect, but my impression is that it was in writing.

148. X Q. In what form was the money paid you—by check, bank notes, or how?

A. I can't recollect certainly, but my impression is by a check enclosed to me.

149. X. Q. Was it not Mr. Caron's check which you received?

A. I can't recollect.

150. X Q. Do you not recollect that shortly after you received that money you learned that Gen'l Tyler disapproved of its being paid you?

A. No; I never learned that; I have no such recollection.

151. X Q. Did you ever place either of the assignments whereby you as trustee became possessed of the mortgages held and prosecuted by the Morris County Bank upon record in the clerk's office of Morris County, State of New Jersey?

(Objected to by defendant's counsel as assuming to give the construction of written papers.)

A. To the best of my recollection, I have never placed any papers on record in the Morris County clerk's office.

152. X Q. Were you not aware that the record of an assignment of a mortgage is constructive notice of that fact?

A. Sometimes I believe it is; under all circumstances I don't know as it is.

ROB'T B. CAMPBELL.

Sworn to before me this 28th day of June, 1872.

HENRY MORRIS,
Special Examiner.

99 Examination of witnesses taken before me in the above-stated cause, at my office, in the city of Newark, in the State of New Jersey, on Saturday, the 10th day of April, A. D. 1875, in the presence of Cortlandt Parker, of counsel for the complainant, and C. A. Hand, of counsel for the defendant, on notice, the service of which was acknowledged on the part of the defendant.

WILLIAM PATERSON,
Examiner.

UNITED STATES OF AMERICA,
District of New Jersey, ss:

GERTRUDE E. CAROW, on her oath, says:

I am living in New York. I am married. My husband is Charles Carow. He is in no business now. He has been a shipping merchant. I am daughter of the complainant. I did live once in Red Bank, in New Jersey. It was the residence of my father. It ceased to be so about 4 years ago. I know the defendant, and have for some time.

Q. 1. Do you remember an interview between your father and the defendant at your father's house in Red Bayk, in which the subject of monies at Morristown, in which your father was interested, was mentioned? If you do, fix the time as nearly as possible, and narrate the conversation which you heard.

(Objection as new matter not called out by evidence of the defendant.)

A. The time was a Saturday afternoon in the early part of August, in 1865, the year the war ended. Knowing my father's anxiety about this money at Morristown, when Mr. Campbell came to the house——

(The witness here was stopped, and asked to state the conversation simply, and says:)

My father asked Mr. Campbell if there was any chance of Mr. Allen receiving the money, $20,000 I think it was, without Mr. Campbell being there. Mr. Campbell assured my father that Mr. Allen could not receive the money. My father said he was anxious that Mr. Campbell should go to Morristown, and added, "For God's sake, take care of this matter." Mr. Campbell assured him it was all right.

Q. 2. Was any reference made in the conversation to a promissory note; if yea, state the conversation?

(Same objection.)

A. My father said something about his annoyance about some money that had not been paid, and that should have been paid, and that made him suspect Allen's honesty.

Cross-examined:

My father and Mr. Campbell were standing on the piazza, and I was just within the parlor door. The conversation, I think, was in the

presence of no one but myself. There were other people at the house.

I had been living with my father there for the second summer.

100 Mr. Campbell had been there before that summer, at my father's house. I could not say how often; quite frequently. He was staying about a mile and a half away from there. I think he may have been at my father's house once after that, but he went back to the city soon after. This was in the afternoon, somewhere between four and seven o'clock. This particular interview was short. Mr. Campbell came over to make a friendly call, and my father took him aside on this particular business. He might have been walking around the grounds, and might have taken him there. I had not been asked to listen. Our supper was at seven o'clock, and this was before then. My father had been in the habit of talking with me about his affairs, and has since continued that habit. He talks freely about his business affairs. My husband was unfortunate in business a few years ago.

X Q. 3. Was your father a large creditor of his?

(Objection.)

A. Yes.

X Q. 4. And is still, I believe.

(Objection.)

A. Yes. I have stated everything of this interview that I recollect. I think the amount of the note about which my father was annoyed, as not having been paid, was some $5,000. I remember the time, because some persons who came with Mr. Campbell brought some birth-day presents for my child and me. They came from England. The birth-day was the sixth of August. Whether this was a little before or after I cannot tell, because the presents came from England. I think there were presents also from New York. The persons who brought the presents were staying with Mr. Campbell. I think they were delivered before this conversation. I think the only name mentioned in the conversation between Mr. Allen and my father was that of Mr. Allen. I heard no other. I made no memorandum of the conversation.

Redirect examination:

R. D. Q. 5. State how you came to overhear this conversation.

A. I knew my father was anxious about this money, and Mr. Campbell was a friend of mine then, and I was anxious that all should be right. Therefore it was I listened to the conversation. The parties were about two feet away from me.

Recross-examination:

A. I told my father that I had heard this conversation on the evening of the same day.

GERTRUDE E. CAROW.

Sworn and subscribed this 10th April, 1875.

WILLIAM PATTERSON,
Examiner.

101 *Exhibits for complainant.*

EXHIBIT A.

This agreement, made the first day of February, one thousand eight hundred and sixty-five, between James Monroe, of the city of New York, party of the firstpart, and Daniel Tyler, of the same place, party of the

second part, witnesseth: That whereas the said party of the first part is indebted to the said party of the second part in the sum of twenty-five thousand dollars, for money and securities loaned and advanced to him:

Now, therefore, the said party of the first part hereby agrees to repay the said indebtedness on or before the first day of August, one thousand eight hundred and sixty-five, as hereinafter stated, and in the manner to be elected by the said party of the second part, his heirs or assigns.

Either to convey to the said party of the second part, free from all encumbrance except the lease hereinafter mentioned, one undivided quarter interest in sixty-one acres of land or thereabouts at Rockaway, in the county of Morris and State of New Jersey, including the iron mine now worked by the Trenton Iron Company, and known as the Hibernia Mine, subject to the lease thereof now held by the said Trenton Iron Company, and one-quarter interest in the said lease, or else twenty-five thousand dollars in cash, with interest thereon from the date hereof at and after the rate of six per centum per annum.

Notice of such election to be given to the said party of the first part ten days prior to the said first day of August, one thousand eight hundred and sixty-five, such notice to be given either personally or by depositing the same in the post-office in the city of New York, to be directed to post-office box No. 5352.

And whereas it may be that the said party of the first part shall not have acquired the title to the said land, in fee and free from encumbrance, on or before the said first day of August, it is hereby agreed that the said party of the second part shall not be compelled to elect whether he will receive a conveyance of one-fourth part of said land and lease or the sum of twenty-five thousand dollars in cash until thirty days after the said party of the first part shall have acquired such land and lease in fee, and shall have given him notice thereof.

And the said party of the first part hereby agrees that he will, within thirty days from the date hereof, assign and convey to the said party of the second part, or to such person as he shall designate, two
102 certain bonds and mortgages made by Theodore T. Wood to the Morris County Bank, one thereof, dated June 6th, 1856, to secure the sum of one hundred thousand dollars, and the other thereof, dated October 8th, 1857, to secure the sum of seventy-five thousand dollars, and also the lease hereinbefore mentioned, to be held as collateral security for the due performance of all the terms and conditions of this agreement.

And the said party of the first part reserves to himself the right to collect and retain all rent that may accrue on the said lease prior to the said first day of August, one thousand eight hundred and sixty-five.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

JAMES MONROE. [L. S.]

Sealed and delivered in presence of—
E. P. NORTON.

(Chas. W. Newton, U. S. examiner, June 2d, 1869.)

EXHIBIT B.

This agreement, made this eleventh day of February, one thousand

eight hundred and sixty-five, between James Monroe, party of the first part, Daniel Tyler, party of the second part, and Robert B. Campbell, party of the third part, witnesseth: That whereas the said party of the first part has this day assigned to the said party of the third part two certain bonds and mortgages, both thereof made by Theodore T. Wood and Mary B., his wife, to the Morris County Bank, one thereof, dated the sixth day of June, one thousand eight hundred and fifty-six, to secure the sum of one hundred thousand (100,000) dollars, and the other thereof, dated the eighth day of October, one thousand eight hundred and fifty-seven, to secure the sum of seventy-five thousand (75,000) dollars; and also a certain mining lease made and entered into by and between the said Theodore T. Wood and the Trenton Iron Company, bearing date the first day of April, one thousand eight hundred and sixty-one, and assigned by the said The Morris County Bank to the said party of the first part as collateral security for a loan to the said bank of the sum of fifty thousand (50,000) dollars; and whereas the said party of the first part has, in and by two certain agreements in writing, one thereof dated the first day of February instant, and the other thereof dated the eighth day of February instant, covenanted and agreed to transfer to the said party of the second part, or to such person as he might designate for that purpose, the absolute title to the said two mortgages and lease on or before the tenth day of March next, to be held by him as collateral security for the true and faithful performance of all the terms and conditions of the said two agreements: and whereas the said party of the second part has designated the said party of the third part as the person to whom the absolute title of the said two mortgages and lease should be coveyed:

103 Now, therefore, it is mutually understood and agreed that in case the absolute title to the said two mortgages and lease shall not be transferred to the said party of the third part on or before the said tenth day of March next, that the amounts of money due and payable by the said two agreements, and by a certain joint and several note of the said party of the first part and Thomas E. Allen, for the sum of twenty thousand (20,000) dollars, dated the eighth day of February instant, shall, at the option of the party hereto of the second part, become and be immediately due and payable; anything in the said agreements or note to the contrary thereof in any way notwithstanding.

And it is also hereby mutually understood and agreed that in case of any default in the payment of the said note, or in case of any default in the payment of the amounts of money to be paid under the terms of the said agreement bearing date the first day of February instant, or of any default in the performance of any of the terms or conditions in either of the said two agreements contained, that the said party of the second part shall have the right and authority to direct and compel the said party of the third part to proceed with the foreclosure and sale of the premises covered by the said mortgages with the greatest speed and promptness allowable by law.

Or he may, if he see fit, direct and compel the said party of the third part to sell the said two mortgages and lease at auction, for cash, at such place in the city of Newark, in the State of New Jersey, as he may elect, on fifteen days' notice to the said party of the first part, such notice to be given either personally or by depositing a notice in the post-office directed to him, at the city of New York, at post-office box No. 5352, and after advertising a notice of such sale ten days in some newspaper published in the said city of Newark.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

JAMES MONROE. [L. S.]
DAN. TYLER. [L. S.]
ROB'T B. CAMPBELL. [L. S.]

Signed, sealed, and delivered in presence of—
GEO. F. VALLENTINE, as to D. Tyler.
E. P. NORTON, as to J. Monroe and R. B. Campbell.

(Chas. W. Newton, U. S. examiner, July 2d, 1869.)

EXHIBIT C.

$4,500.] NEW YORK, *April 17th*, 1865.

Sixty days after date I promise to pay to the order of Daniel Tyler forty-five hundred dollars, with interest from date; value received. Payable at the office of Charles Carew, 76 South st.

JAMES MONROE.

(Chas. W. Newton, U. S. examiner, June 2d, 1869.)

104 EXHIBIT D.

NEW YORK, *April 17th*, 1865.

ROB'T B. CAMPBELL, Esq.:

SIR: I have this day given to Gen. Dan'l Tyler a promissory note for the sum of four thousand five hundred dollars, payable at sixty days from this date, with interest from date, and hand you herewith a certificate for one hundred shares of the Morris County Bank as collateral thereto, and I further direct you to hold any proceeds arising from the sale of the property mortgaged by Theodore T. Wood and wife to the Morris County Bank, which mortgages are now held by you, and to pay thereout the amount of said note in case the same should not be punctually paid by me at maturity.

JAMES MONROE.

(Chas. W. Newton, U. S. examiner, June 2d, 1869.)

EXHIBIT E.

MORRISTOWN, *July 11th*, 1865.

T. E. ALLEN, Esq.:

DEAR SIR: I came up here to-day expecting surely to find you, and also expecting to get some money. Mr. Halsey tells me that the whole amount of the property sold on the 20th June has been paid in, and that he is not ready to go on with the sale of the other parcels under the foreclosure. You will have in mind that $50,000 of the amount belongs to me under the mortgage for that amount executed by the bank, and the remainder is also to be paid over to me under the arrangements made with Mr. Monroe.

I am requested by Gen. Tyler and Mr. Monroe to have the 450 shares, of which the certificates are enclosed, transferred to the name of Daniel Tyler; will you have the certificate made out at your earliest convenience, and sent to me by mail? I will settle with you about the stamp when I see you.

Yours, truly,

ROB'T B. CAMPBELL.

(Chas. W. Newton, U. S. examiner, June 2d, 1869.)

EXHIBIT F.

16 WALL STREET, N. Y., *July 12th*, 1865.

T. E. ALLEN, Esq.:

DEAR SIR: I received your note stating that Mr. Pierson "wants Mr. Monroe to assign the stock on the books of the bank" before you issue the scrip. I do not understand what that is for. The certificates and powers that I left for you appeared to me to be in the usual form for transferring stock. I wish that you would send me the new certificates as soon as possible.

105 I have explained to Mr. Monroe (who says he is going to see you this afternoon) what my position is about the $50,000; that it is absolutely necessary that I should have that amount.

He can explain it to you, perhaps, for I am afraid that I did not make you fully comprehend the state of affairs.

Yours, truly,

ROB'T B. CAMPBELL.

(Chas. W. Newton, U. S. examiner, June 2d, 1869.)

EXHIBIT G.

16 WALL STREET, N. Y., *Aug. 4th*, 1865.

THOS. E. ALLEN, Esq.:

DEAR SIR: I take the liberty of reminding you that your contract and note to Gen. Tyler comes due on the 8th inst. The other payments of Mr. Monroe having not been met, I think that the general will be urgent that this one should be promptly paid at its maturity.

Yours, respectfully,

ROB'T B. CAMPBELL.

(Chas. W. Newton, U. S. examiner, June 2d, 1869.)

EXHIBIT H.

16 WALL STREET, N. Y., *Aug. 22d*, 1865.

THOMAS E. ALLEN, Esq., *President, &c.:*

DEAR SIR: I understand that the proceeds of the Wood mortgages that I hold are in a condition to be paid over. I hereby authorize you to collect the money, as the president of the bank, and pay over the same to me, or enough to satisfy the claims that I hold.

Mr. Monroe says that he expects to see you on Wednesday evening at your house. I shall be in my office on Thursday and Friday; 11 o'clock will be as good a time to find me as any.

Yours, truly,

ROB'T B. CAMPBELL.

(Chas. W. Newton, U. S. examiner, June 2d, 1869.)

EXHIBIT I.

16 WALL STREET, NEW YORK,
Aug. 30th, 1865.

THOMAS E. ALLEN, Esq.:

DEAR SIR: Sometime since you had authority to collect and transmit to me the money proceeding from the Wood mortgages, and I un-

derstood when I saw you last that you would bring me in the money to pay off Gen. Tyler's $25,000 contract to-day, and I so told the
106 general. I was very much disappointed not to receive your note, saying you would see me on Friday. I am sorry I was not in this morning when you called, and I hope that you will bring in the money with you on Friday without fail.

Mr. Monroe has made propositions to the general for another loan, but he has neither accepted nor refused them; but he has said he would not entertain them until the present loan was paid; that mortgages had been assigned to him, or rather to me for his benefit; that the money had been realized on them, and that he wanted it paid over, and was anxious that I should go to Morristown personally and get it. But I knew that you would prefer that it should be received from the master by yourself, and therefore I sent you the request to collect it and send it to me, and I feel that every day that the general is kept out of his money is damaging the credit of the bank, and of Mr. Monroe with him, and throwing obstacles in the way of any other transactions with him.

Yours, truly,

ROBT B. CAMPBELL.

P. S.—Do not fail to bring in the money.

(Chas. W. Newton, U. S. examiner, June 2d, 1869.)

EXHIBIT K.

16 WALL STREET, N. Y., *Sept. 6th*, 1865.

T. E. ALLEN, Esq.:

DEAR SIR: Your memorandum of stock purchased by you since Feb. 14 came duly to hand, and I am much obliged for it. What I asked you for, and you promised to send to me to-day, was the dates of the money received from the foreclosure of the mortgages, and the times when, and the persons to whom, the same was paid. You said that you had all the facts at your house, and would send them to me to-day, as you could not wait to pick them out from the paper that you showed me at the bank.

Yours, respectfully,

ROBT B. CAMPBELL.

(Chas. W. Newton, U. S. examiner, June 2d, 1869.)

EXHIBIT L.

NEW JERSEY, *County, ss:*

Daniel Tyler, of said State, being duly sworn according to law, on his oath saith that in the month of January last application was made to him by one James Monroe, of the city of New York, through Robert B. Campbell, esq., counsellor at law of said city, for a loan of thirty thousand dollars, and proposed to secure said loan by placing in the hands of said Robert B. Campbell a mortgage given, as he said, by one Theodore T. Wood to the Morris County Bank, for the sum of ninety-seven thousand dollars, and also a lease of what is known as the Hibernia Mine, in the county of Morris, made by said Theodore
107 T. Wood to the Trenton Iron Company, and assigned by said Wood to the Morris County Bank as collateral security, as this deponent understood, of the same money mentioned in and secured by

the said mortgage; that at that time said Monroe contemplated, as he said, procuring title in himself to the said Hibernia Mine, and offered to this deponent, as an inducement to make said loan, the privilege of taking in payment thereof one-fourth interest in the aforesaid lease, and one-fourth interest in the fee of the said Hibernia Mine, within six months after making said loan, if the said Monroe should, within that time, procure the title thereto; and also further offered, in addition to said one-fourth interest in said mine and lease, to transfer to this deponent three hundred shares of the stock of the Morris County Bank, or in case this deponent preferred, he offered to repay to this deponent twenty-five thousand dollars of said loan in cash, with interest at six per cent. per annum, and transfer to him for the remainder three hundred shares of the capital stock of the said Morris County Bank, which said bank was then in a state of suspension, and said Monroe was then, as this deponent understood, endeavoring, with others, to resuscitate the same.

This deponent further saith that in answer to said application and proposition of said James Monroe, he offered to deliver to said Robert B. Campbell, for the use of said Monroe, twenty-five thousand dollars of the five-twenty year bonds of the United States, with the unpaid coupons attached, which were then selling in the market at considerable above par, upon the terms proposed by said Monroe, as hereinbefore set forth; that said offer was accepted by said Monroe, and the bonds were accordingly delivered by this deponent to said Robert B. Campbell, and by him were delivered to said James Monroe, on or about the fourteen day of February last; that at the time of the delivery of said bonds to said Monroe, he, said James Monroe, by a written agreement, agreed to repay said twenty-five thousand dollars, with interest, on the first day of August, eighteen hundred and sixty-five, and also, by a deed of assignment, duly executed under his hand and seal, and dated on the eleventh of February last, assigned to said Robert B. Campbell "two certain indentures of mortgage, both made by Theodore T. Wood and his wife to the Morris County Bank, one thereof bearing date the sixth day of June, one thousand eight hundred and fifty-six, and recorded in the office of the clerk of Morris County on the fifth day of October, one thousand eight hundred and fifty-seven, in book C 2 of mortgages, at page 541, and was to secure the sum of one hundred thousand dollars, and the other thereof bearing date the eighth day of October, one thousand eight hundred and fifty-seven, and recorded in the office of the said clerk on the twelfth day of said October, in book C 2 of mortgages, at page 557, and made to secure the sum of seventy-five thousand dollars, together with the bonds or obligations therein described, and the money due and to grow due therein, with the interest; and also a certain mining lease, made and entered into by and between the said Theodore T. Wood and the Trenton Iron Com-
108 pany, bearing date the first day of April, one thousand eight hundred and sixty-one;" and the said Monroe also, by said deed of assignment, constituted and appointed said Robert B. Campbell his attorney to collect and receive payment of the money due on said bonds and mortgages, and said Monroe at the same time delivered to said Robert B. Campbell a deed of assignment, purporting to have been executed by the Morris County Bank, under its corporate seal, and by their president, Thomas E. Allen, assigning the above-mentioned bonds and mortgages to him, the said James Monroe, to secure to him, said Monroe, the payment of the sum of fifty thousand dollars, on the eleventh day of June, eighteen hundred and sixty-five, with interest,

which said several deeds of assignment are now in possession of this deponent.

And this deponent further saith that said Robert B. Campbell had no interest personally in the bonds and mortgages so assigned to him, but held them merely in trust for this deponent, and to secure to this deponent the repayment of said loan, or the fulfillment of said agreement by said James Monroe; that at the time said assignment to said Robert B. Campbell was made it was well understood by him and also by this deponent that said mortgages were in process of foreclosure, in the name of the Morris County Bank, in the court of chancery of this State, and that said original bonds and mortgages were in the hands of Samuel S. Halsey, esquire, solicitor of the Morris County Bank; that when said loan was made and the said assignments were received this deponent instructed said Robert B. Campbell to take all necessary steps to make said assignments available to secure said loan to this deponent, and this deponent supposed he had notified the solicitor of said bank of said assignments; that said Robert B. Campbell went to the county of Morris at different times to look after said securities, and saw and conversed with said solicitor in reference to the sale of said mortgaged premises under the decree of foreclosure, as he informs this deponent, and as this deponent verily believes; and he informs this deponent that he fully supposed said solicitor understood and knew of the making of said assignment, and that the proceeds of the sale, to an amount sufficient to repay the loan of this deponent, were to be paid over to him, said Campbell, for the use of this deponent; but whether said solicitor knew of said assignment, and of the interest of this deponent in said mortgages or not, this deponent has been informed by both said Campbell and Monroe that Thomas E. Allen, who was then acting as president of the said The Morris County Bank, did know of said loan by this deponent to said Monroe and the terms thereof, as hereinbefore stated, was present when the bonds of this deponent were paid by said Campbell to said Monroe, and when the assignments of the said Wood mortgages made by him, said Allen, as president of the Morris County Bank, to said Monroe, and by said Monroe to said Campbell, were, in pursuance of the terms of the loan, handed over by said Monroe to said Campbell for the use and security of this de-
109 ponent, and fully assented to the right of said Monroe to dispose of said bonds and mortgages by such assignment.

And this deponent further saith that on or about the seventeenth day of April, eighteen hundred and sixty-five, said James Monroe applied to this deponent for, and obtained from him, a further loan of four thousand and five hundred dollars, for which amount he gave to this deponent his promissory note, dated April seventeenth, eighteen hundred and sixty-five, in the city of New York, and payable sixty days after date, with interest, at No. 76 South street, New York City, and as security for the payment thereof delivered to said Robert B. Campbell, for this deponent, a certificate for one hundred shares of Morris County Bank stock, and also agreed that said mortgages assigned to said Campbell, as hereinbefore stated, should also be held as security for said last-mentioned loan, and directed to said Campbell, in writing, to pay the same out of the proceeds of said mortgages.

And this deponent further saith that such proceedings were had in the said suit for the foreclosure of said Wood mortgages that a decree of foreclosure was duly made in the court of chancery, and a writ of fieri facias was issued upon said decree, directed to Van Cleve Dalrymple, esquire, a master of said court, directing him to make sale of

said mortgaged premises; that having advertised said premises, he sold the same in the month of June last, as this deponent is informed, for upwards of eighty-five thousand dollars; and this deponent further saith that said Robert B. Campbell, having confidence in the honesty of said Thomas E. Allen (who was, however, a stranger to this deponent), instead of requiring the said master to pay the proceeds of said sale into the court of chancery, so that this deponent, or said Campbell, could secure, through the order of said court, payment of said loan out of said proceeds, permitted said master to pay said proceeds of sale to the solicitor of the Morris County Bank, supposing said Allen would at once direct said solicitor to pay to said Campbell or to this deponent the amount due to him upon the said loan to said Monroe; that said master did accordingly pay over to Samuel S. Halsey, solicitor of the Morris County Bank, out of said proceeds of sale, the sum of eighty-four thousand and nine hundred dollars, or thereabouts; that soon after the said Robert B. Campbell learned that said proceeds of the sale had been paid to said solicitor, he, in behalf of this deponent, caused inquiry to be made of said solicitor as to the amount received by him, and the disposition thereof, in order that he might obtain payment of the amount due this deponent, and then, to the surprise and greatly to the wrong of this deponent, he found that all of the said proceeds of said sale received by said solicitor due to the complainants in said suit, except thirty-five thousand dollars, as stated by said solicitor, had been paid out by him on the order of said Thomas E. Allen, as president of the Morris County Bank, and that the balance of thirty-five thousand dollars was paid by said solicitor to said Thomas E. Allen, personally; and said Allen, when applied to by the counsel of this deponent, admitted said proceeds of sale had been party paid out by his order in payment of the debts of the Morris County Bank, and partly received by him, personally, from the said solicitor; and this deponent further saith that as soon as he discovered that said money had been so improperly taken by said Allen, he, by his counsel, demanded payment of his debt due from said James Monroe from said Allen, but said Allen denied his liability to pay to this deponent the money received from the said Samuel S. Halsey, as hereinbefore stated, and never has paid any part thereof.

This deponent further saith that said Monroe was an entire stranger to him when said loan was made, and it was made entirely on the faith of the said securities to be assigned to said Robert B. Campbell; that, so far as he can learn, said Monroe is a man of little if any responsibility, and unless this deponent can collect said debt from said Allen he is in great danger of losing it. And this deponent further saith that he had no acquaintance with said Thomas E. Allen; he supposed he was a man of property; but since this difficulty has occurred he has caused an examination of the records of the county of Morris to be made, and finds that, so far as appears by said record, said Allen is not the owner of said real estate in said county, excepting a house and lot in the village of Madison, the title to which, so far as shown by said records, is in said Allen; but deponent has been informed and believes that said house and lot was conveyed away by said Allen some time ago, but that the purchaser thereof had neglected to have his deed therefor placed on the said records; and this deponent does not know that said Allen owns any visible property out of which the demand of this deponent could be made. And this deponent further saith that said Allen, when he took said money from said Halsey, well knew, as this

deponent has good reason to believe, that said Monroe was of doubtful responsibility, and also well knew that this deponent fully expected to receive payment of his said loans out of said money; that he took said money, knowing that it belonged to this deponent, and without any pretence or shadow of right to it, and by concealing from said Halsey the fact of the assignment of said mortgages to said Campbell, and the interest of this deponent in said proceeds, and refusing to pay over the same to this deponent when requested by him, this deponent claims that the conduct of said Allen indicates a deliberate intention to defraud this deponent. And this deponent further saith that the amount due to him from said Monroe on said loan hereinbefore mentioned, and which he is entitled to be paid out of the proceeds of the sale of said mortgaged premises, is thirty thousand eight hundred and seventy-two dollars and fifty-five cents, which amount he claims said Allen is legally bound to pay to him.

DAN'L TYLER.

Sworn and subscribed, this 20th day of November, A. D. 1865, before me.

ARCH'D K. BROWN, *M. C.*

111 STATE OF NEW JERSEY,
County of , *ss:*

Robert B. Campbell, of the city of New York, counsellor at law, being duly sworn according to law, on his oath saith that he has read the annexed affidavit of Daniel Tyler, and knows the contents thereof, and that the matters therein set forth in relation to this deponent, and his action in the matters therein referred to, are true; that in or about the month of January, eighteen hundred and sixty-five, James Monroe applied to this deponent to procure for him thirty thousand dollars, or thereabouts, offering to secure the same by an assignment of the mortgages mentioned in the said annexed affidavit of Daniel Tyler; that at the time of such application the said Monroe, and also Thomas E. Allen, the then president of the Morris County Bank, represented to this deponent that the said Monroe was the owner of eleven hundred and seventy shares of the capital stock of the said bank, and also that he owned claims against the said bank amounting to the sum of thirty-six thousand dollars, and both the said Monroe and the said Allen represented that the said money was wanted, and would be used for the purpose of paying off debts and demands due by the said bank to its several creditors; that thereupon the said Tyler agreed to let the said Monroe, on the first day of February, eighteen hundred and sixty-five, have twenty-five thousand dollars in United States five-twenty year bonds, then worth considerably above par, and the said Monroe agreed to pay him therefor, on the first day of August, eighteen hundred and sixty-five, the sum of twenty-five thousand dollars, with interest thereon at the rate of six per cent. per annum, and to deliver to him certain shares of the capital stock of said bank; that subsequently thereto the said Allen stated that a greater sum of money would be needed to pay off the indebtedness of the bank, and that the further sum of twenty thousand dollars or thereabouts would pay off such indebtedness, and enable the bank to recommence its business; thereupon the said Monroe directed this deponent to make application to the said Tyler for the advance of a further sum of money, to be secured by the same mortgages; that thereupon the said Tyler advanced to him the further amount of eighteen thousand dollars, in such United States five-twenty year bonds, and the said Monroe promised to pay him therefor the sum of twenty thousand dollars, on the eighth day of August, eighteen hundred and sixty-five, and to deliver to him certain shares of the capital

Exhibit O for complainant.—May 2, 1872.—HENRY MORRIS, *special examiner.*

James Monroe.

No. 393. NEW YORK, *Aug.* 4, 1865.
(Int. rev. stamp,) BANK OF NEW YORK,
(2 cts. J. M. 65.) National Banking Ass.

Pay to the order of R. B. Campbell five thousand dollars.
$5,000.

JAMES MONROE.

Exhibit P on the part of complainant.—May 2, 1872.—HENRY MORRIS, *special examiner.*

MORRISTOWN, *Sep.* 6, 1865.

SAM'L S. HALSEY, Esq., *Solicitor, &c.:*

You are hereby notified that the Morris County Bank, by Tho's
115 E. Allen, their president, assigned the mortgages made by Theodore T. Wood to said bank to James Monroe, as security for the sum of $50,000, by assignment dated February 11, 1865, and by assignment dated the same day the same were assigned to me as security for moneys loaned and still unpaid. You are therefore required to retain any money being the proceeds of such mortgages that now are or hereafter may come into your hands, and pay the same over to me.

Y'rs, &c.,

ROB'T B. CAMPBELL.

Exhibit Q for complainant.—May 2, 1872.—HENRY MORRIS, *special examiner.*

16 WALL STREET, N. Y., *Oct.* 4, 1865.

THEODORE LITTLE, Esq.:

DEAR SIR: I sent for Theodore Allen to find out whether he was to get the money to pay off this mortgage from the "friend" that he spoke to me about, who was going to see the coal mine in which Mr. Monroe is interested. He says that he had been to see the mine, &c., and spoke of it as very valuable, but that he has not yet agreed to let him have the money, but will give him a definite answer to-morrow or the next day, when he meets him on the cars coming in from Morristown. Theodore Allen says that if this way of getting the money falls through he can pay $5,000 in cash, and the rest in a short time, giving security for its payment, and evidently contemplating that the security, or at least a part of it, would be stock of the M. Co. Bank. They are evidently still fighting for delay, and it seems to me that their movements would be very much accelerated by commencing proceedings.

You spoke of commencing against the bank for "money had and received;" is that still your opinion? Have we any criminal proceedings ag'st Thos. E. Allen; and, if so, must that be simultaneous, or may it come after? Please let me hear from you. I think that the service of a summons would materially expedite the settlement. In whose name had the proceedings best be, in the general's or in mine? He is anxious that his name should not be used, but if it makes any difference, that is, if the use of my name would raise any unnecessary legal questions or would in any respect complicate matters, his must be used.

Yours, truly,

ROB'T B. CAMPBELL.

P. S.—Oct. 6th.—This letter should have been sent to you before, but it was overlooked.

116 *Exhibit R for complainant.—June* 28, 1872.—HENRY MORRIS, *special examiner.*

Rec'd July 6, '67.

RED BANK, N. JERSEY, 1867.

ROBERT B. CAMPBELL, Esq.,
New York City:

MY DEAR SIR: In the month of January, 1865, you called on me and proposed a loan of $25,000 to one James Monroe. At this time you had no more reason for applying to me for a lone of $25,000, or any other sum, than you had to apply to Mrs. Kermit, or any other person who you knew or supposed you knew had money in possession. I never had, previous to this time, any conversation with you as to money; never suggested that I had money to loan or was a money-lender; on the contrary, when you made the application I told you distinctly that my funds were satisfactorily invested, and that I had no desire to change the investments. You stated in answer that the loan would be perfectly safe; that the property offered as security was worth at least $50,000; that you knew Mr. Monroe, the proposed borrower, well; that he owned a house in the city filled with valuable pictures; that you would get very favorable terms and make the loan perfectly secure. On your application and representations, some time early in February, 1865, I agreed to make a loan of $25,000, first you agreeing to draw the necessary papers, to be the trustee to hold them, to collect the money when due, and to do all the business, and with this understanding I directed Mr. Carow to hand you $25,000 of 5-20 United States bonds, then worth 9 per cent. premium. A day or two after, when I supposed the transaction closed, and all the necessary papers and securities, according to agreements, in your hands, you applied to me again and stated that the parties controlling the mortgage which was to be the security for the $25,000 loan would not transfer it to you as trustee unless the sum was advanced to $50,000, and you applied for the additional sum, not offering any further security than already fixed for the loan of $25,000, saying the mortgage would be perfect security for this further sum, and on your recommendation, I agreed to advance the further sum of $18,000 in 5-20 U. States bonds and take a mortgage for $50,000 to secure $45,000, payable in six months, and receive a bonus of 450 shares of Morris County Bank stock, which your friend Mr. Monroe presented figures to show was worth fifteen dollars per share, when in fact it proves not worth a cent.

At a subsequent period, after having attended a meeting of the stockholders of this bank, you reported to me by letter that the stock was worth 44 per cent., when from what was exhibited at a stockholders' meeting on the 24th of June, 1867, I doubt if the shareholders will ever realize a cent.

117 When the loan was completed, as above stated, I remarked to you that you were the only person who could have induced me to make this loan, for I had heard this from Mr. Carow—that you were extremely cautious in all business transactions; that your late father's estate, which was left very complicated, had by your care and great caution been extricated from great difficulty, and that you were every way reliable; and when the loan was made I was perfectly satisfied that you

stock of said bank, and said Allen and Monroe gave to the said Daniel Tyler their promissory note for said twenty thousand dollars; that thereupon the said Allen, as president of the said bank, executed and delivered to the said Monroe an assignment of the said mortgages, as collateral security for the sum of fifty thousand dollars, and the said Monroe assigned the same to this deponent, to be held for the security and benefit of the said Tyler, to the extent of his indebtedness to him.

That this deponent delivered the said bonds to the said Monroe in the presence of the said Thomas E. Allen, and that all such
112 bonds were immediately and in the presence of this deponent delivered to the said Thomas E. Allen; that the assignment of the said mortgages by the said bank to the said James Monroe was delivered to this deponent at the same time as the assignments thereof by said Monroe to this deponent; that said Allen was well aware of the assignment of the said mortgages to this deponent for the protection of the said Tyler, and of the agreements between the said Monroe and the said Tyler; that the said United States five-twenty year bonds were taken and sold by the said Allen, and that this deponent has been informed by the said Allen that they were sold for ten per cent. above par, that is to say, for the sum of forty-seven thousand three hundred dollars.

That subsequently thereto, and on or about the seventeenth day of April, eighteen hundred and sixty-five, the said James Monroe borrowed from the said Tyler the further sum of four thousand five hunded dollars, and gave his note for the same to the said Daniel Tyler, dated New York, April 17, 1865, and payable sixty days after date, with interest, and agreed that the said assignment of mortgages should be held and bound as collateral security for the repayment thereof, and that no part of the same has been repaid, and that after the said loans had become due, the said Monroe, in the presence and hearing of the said Allen and of this deponent, stated that the same had been applied to the purchase of United States bonds for the purpose of enabling the said bank to become a national bank, which was not denied by said Allen.

That this deponent attended at the time and place at which the sale under the mortgages was advertised to take place, when the sale was adjourned to the twentieth day of June, at which time also this deponent attended, and property was sold under the said mortgages amounting to over eighty thousand dollars, and this deponent was told that the money would not be paid over for thirty days; and that subsequently said Allen procured portions of the money proceeding from such sale, to be paid to other parties, and received the remainder himself, without the knowledge or authority of this deponent; that when the payment of the sum of twenty thousand dollars became due the said sum was paid to this deponent by said Allen; that this deponent has demanded of the said Allen the amount due to the said Tyler, and as security for which this deponent held the assignments of the said mortgages, but the said Allen has positively refused to refund the same or any part thereof.

ROBT B. CAMPBELL.

Sworn and subscribed, at Jersey City, N. J., this 20th day of November, A. D. 1865, before me.

A true copy.

ARCH'D K. BROWN, *M. C.*
CHAS. P. SMITH, *Clk.*

(Chas. W. Newton, U. S. examiner, June 2d, 1869.)

113 *Exhibit M on the part of the complainant.—April* 27, 1872.—HENRY MORRIS, *special examiner.*

16 WALL STREET, NEW YORK, *April* 21, 1865.

THOS. E. ALLEN, Esq., *Pres't, &c.:*

DEAR SIR: I send you herewith duplicate papers for commencing to change a State bank to a national bank.

I want all of these papers properly executed, i. e., both copies complete. The "authority for conversion" is complete on the first page, except the names of the directors, which you will please fill in before offering the same for signature. The second page is for the signatures, and should indicate the number of shares to the name of each stockholder on the books of the bank, since the capital has been increased to $200,000.

The "certificate of organization" is complete on the first page; the second page has place for a list of the names, residences, and number of shares of all the stockholders of the bank.

On the third page you will get the signatures of the directors (as many as possible, and at least one-half), and all the directors who sign will acknowledge their signature (to both copies) before a notary public, who will put his certificate on the fourth page, and affix his seal.

The "articles of association" are complete, excepting the signatures of the directors, which are to be procured on both copies, and the president is to sign the certificate on the third page of one of the copies (on the other copy this certificate is stricken out).

I will affix the proper stamps to all the papers when they are returned to me.

Get these things done as soon as possible, and forward them to me or Mr. Monroe, at 16 Wall street. Mr. Monroe wants to go on to Washington on Tuesday night, and must take these papers with him. Hasten.

Yours, truly,

ROB'T B. CAMPBELL.

114 *Exhibit N on the part of the complainant.—April* 27, 1872.—HENRY MORRIS, *special examiner.*

Rec'd Sept. 6, 1865, from T. E. Allen.

D'R SIR: I here hand you a statement of stock bought after February 14, 1865:

50	shares	at $825		1,250	
257	"	at	22 50	5,782	50
20	"	at	25	500	
20	"	"	15	300	
60	"	"	21	1,260	
58	"	"	22 50	1,305	
Expense to purchase same				460	
				10,857	50
Paid James Monroe to the order of Eli P. Norton				5,000	
" R. B. Campbell				20,000	
				35,857	50
Rec'd from Monroe				35,000	
				857	50

To R. B. CAMPBELL, Esq.

SEP. 4, 1865.

Exhibit O for complainant.—*May* 2, 1872.—HENRY MORRIS, *special examiner.*

James Monroe.

No. 393. NEW YORK, *Aug.* 4, 1865.

{ Int. rev. stamp, } BANK OF NEW YORK,
{ 2 cts. J. M. 65. } National Banking Ass.

Pay to the order of R. B. Campbell five thousand dollars.
$5,000.

JAMES MONROE.

Exhibit P on the part of complainant.—*May* 2, 1872.—HENRY MORRIS, *special examiner.*

MORRISTOWN, *Sep.* 6, 1865.

SAM'L S. HALSEY, Esq., *Solicitor, &c.:*

You are hereby notified that the Morris County Bank, by Tho's
115 E. Allen, their president, assigned the mortgages made by Theodore T. Wood to said bank to James Monroe, as security for the sum of $50,000, by assignment dated February 11, 1865, and by assignment dated the same day the same were assigned to me as security for moneys loaned and still unpaid. You are therefore required to retain any money being the proceeds of such mortgages that now are or hereafter may come into your hands, and pay the same over to me.

Y'rs, &c.,

ROB'T B. CAMPBELL.

Exhibit Q for complainant.—*May* 2, 1872.—HENRY MORRIS, *special examiner.*

16 WALL STREET, N. Y., *Oct.* 4, 1865.

THEODORE LITTLE, Esq.:

DEAR SIR: I sent for Theodore Allen to find out whether he was to get the money to pay off this mortgage from the "friend" that he spoke to me about, who was going to see the coal mine in which Mr. Monroe is interested. He says that he had been to see the mine, &c., and spoke of it as very valuable, but that he has not yet agreed to let him have the money, but will give him a definite answer to-morrow or the next day, when he meets him on the cars coming in from Morristown. Theodore Allen says that if this way of getting the money falls through he can pay $5,000 in cash, and the rest in a short time, giving security for its payment, and evidently contemplating that the security, or at least a part of it, would be stock of the M. Co. Bank. They are evidently still fighting for delay, and it seems to me that their movements would be very much accelerated by commencing proceedings.

You spoke of commencing against the bank for "money had and received;" is that still your opinion? Have we any criminal proceedings ag'st Thos. E. Allen; and, if so, must that be simultaneous, or may it come after? Please let me hear from you. I think that the service of a summons would materially expedite the settlement. In whose name had the proceedings best be, in the general's or in mine? He is anxious that his name should not be used, but if it makes any difference, that is, if the use of my name would raise any unnecessary legal questions or would in any respect complicate matters, his must be used.

Yours, truly.

ROB'T B. CAMPBELL.

P. S.—Oct. 6th.—This letter should have been sent to you before, but it was overlooked.

116 *Exhibit R for complainant.—June* 28, 1872.—HENRY MORRIS, *special examiner.*

Rec'd July 6, '67.

RED BANK, N. JERSEY, 1867.

ROBERT B. CAMPBELL, Esq.,
New York City:

MY DEAR SIR: In the month of January, 1865, you called on me and proposed a loan of $25,000 to one James Monroe. At this time you had no more reason for applying to me for a lone of $25,000, or any other sum, than you had to apply to Mrs. Kermit, or any other person who you knew or supposed you knew had money in possession. I never had, previous to this time, any conversation with you as to money; never suggested that I had money to loan or was a money-lender; on the contrary, when you made the application I told you distinctly that my funds were satisfactorily invested, and that I had no desire to change the investments. You stated in answer that the loan would be perfectly safe; that the property offered as security was worth at least $50,000; that you knew Mr. Monroe, the proposed borrower, well; that he owned a house in the city filled with valuable pictures; that you would get very favorable terms and make the loan perfectly secure. On your application and representations, some time early in February, 1865, I agreed to make a loan of $25,000, first you agreeing to draw the necessary papers, to be the trustee to hold them, to collect the money when due, and to do all the business, and with this understanding I directed Mr. Carow to hand you $25,000 of 5-20 United States bonds, then worth 9 per cent. premium. A day or two after, when I supposed the transaction closed, and all the necessary papers and securities, according to agreements, in your hands, you applied to me again and stated that the parties controlling the mortgage which was to be the security for the $25,000 loan would not transfer it to you as trustee unless the sum was advanced to $50,000, and you applied for the additional sum, not offering any further security than already fixed for the loan of $25,000, saying the mortgage would be perfect security for this further sum, and on your recommendation, I agreed to advance the further sum of $18,000 in 5-20 U. States bonds and take a mortgage for $50,000 to secure $45,000, payable in six months, and receive a bonus of 450 shares of Morris County Bank stock, which your friend Mr. Monroe presented figures to show; was worth fifteen dollars per share, when in fact it proves not worth a cent.

At a subsequent period, after having attended a meeting of the stockholders of this bank, you reported to me by letter that the stock was worth 44 per cent., when from what was exhibited at a stockholders' meeting on the 24th of June, 1867, I doubt if the shareholders will ever realize a cent.

117 When the loan was completed, as above stated, I remarked to you that you were the only person who could have induced me to make this loan, for I had heard this from Mr. Carow—that you were extremely cautious in all business transactions; that your late father's estate, which was left very complicated, had by your care and great caution been extricated from great difficulty, and that you were every way reliable; and when the loan was made I was perfectly satisfied that you

should prepare the necessary papers, made you by agreement the trustee, and the entire securities of the loan were placed in your hands and left there in the most perfect confidence. Some time in April, 1865, Monroe applied to me through you for a further loan—I think for $25,000—which was to be used in changing the Morris County Bank, in which I was to have 450 shares, into a national bank, which it was represented would make any shares worth par. I declined this further loan, but subsequently agreed, if Monroe (who at this time I often met at your office, and who you represented as a respectable party) would agree to put the Morris County Bank into a national bank, I would loan him $4,500 for 60 days on his note, 100 shares of Morris County Bank being pledged for its payment. This was agreed to, and Mr. Carow for me gave you $4,500, and on the 17th of April, 1865, you took Monroe's note for $4,500, made payable on the 16–19th June, 1865, at the office of Charles Carow, 76 South st., New York. When the note became due you did not send it to Mr. Carow's office, and it was not until some time after its maturity that I ascertained it had not been paid. I then enquired of you why it had not been paid, and you said you "overlooked it," and that you would see Mr. Monroe and get the money. I enquired of you a number of times after this, and you told me you were trying to get the money. This note has not been paid to this day, and was due 9th June, 1865.

The loans for $45,000 matured respectively on the 1st and 8th day of August, 1865, nearly two months after the maturity of the $4,500 note, which you yourself were trying unsuccessfully to collect. Surely there was sufficient warning to induce you to look very carefully to the legal forms absolutely necessary to secure beyond a doubt or question Monroe's and Allen's loan for $45,000, for the payment of which you held as trustee the mortgaged property, which in July, 1865, sold for $86,400 cash. Under these circumstances and with this warning of Monroe's unpaid note of $4,500, it was your neglect to perform your duty as trustee, either by notifying the bank or the master who was conducting the sale of the mortgaged property that you held the mortgage by legal transfer. That $35,000 will be lost. The loans for $4,500 matured 1st and 8th August, 15, 1865, and the property on which you held the transfer of the mortgage as security was sold on the 21st June, 1865, and you were present at the sale. On or before the 18th July, 1865, $86,400 had been paid into the master's hands, subject to order of the holder of mortgage, and up to that time, as was proven on Allen's
118 trial, you had not given notices, as it was your duty to have done, either to the bank or to the master who was to receive the money accruing from the sale of the mortgaged property, that you held the mortgage by legal assignment, and the consequence was that your friend Mr. Allen, pres't of the Morris County Bank, in whom you reposed so great confidence that on the 22d Aug., 1865, you gave him an order to receive the $50,000 and bring it to you, and it was proven on Mr. Allen's trial that Mr. Allen or Mr. Halsey, bank solicitor, forty days before the date of your order for Allen to receive the money, to wit, on the 18th July, 1865, had received from the master in chancery, Mr. Dalrymple, the sum of $86,400, of which $50,000 was my money, and which by no possible means could have been diverted from your hands as my trustee had you, as in duty bound, put the transfer of the mortgage to you on record, or had you given the master notice verbally or in writing that you held the transfer of the mortgage, and it was proved on Allen's trial that in fact only your friends Monroe and Allen knew of the transfer of the mortgage to you, and they kept it a profound secret, so that even Mr.

Halsey, the solicitor of the bank, swore that he knew nothing about it, and that had he knew nothing about it, and that had he known even by accident that the mortgage had been so transferred, he would not have paid Allen a dollar, but would have left the money in court to be paid to the legal holder of the mortgage; thus, in consequence of your neglecting a plain duty as trustee, the $86,400 passed into the hands of an insolvent bank and its president, Mr. Allen, who you implicitly trusted as your agent to receive the money, instead, as was your duty, to receive it yourself. This Mr. Allen pays you $20,000 on account and refuses to pay any further sum, and the result is a lawsuit with Mr. Allen at an expense already of over $1,000, and a verdict of $23,000, of which not a cent will probably ever be received. In this connection I feel it necessary to refer to this suit, which has given me more annoyance and trouble than the entire business transactions of a long and not a very inactive life.

When Allen received the money and refused to account for anything over $20,000 which you acknowledge he has paid you (the jury found he had paid you $25,000 and you have paid me only $20,000), it became necessary to sue him, and you, a trustee, took the matter in hand and selected as counsel Theo. Little, esq., of Morristown, as the ablest assistant that could be had. On the 14th Sept., 1865, you brought me in contact with Mr. Little and we talked the case over, I stating that I wished the suit brought in your name as trustee; that I did not wish my name used in the case if possible to avoid it. It was afterwards (I fear unfortunately) decided to bring the action in my name, which I understand Mr. Little to say was done at your request or suggestion, but that on the whole he at the time thought it best the action should be so brought to use you as a witness. I think Mr. Little now regrets having done so, as your testimony, which he then thought very
119 important to the case, fell somewhat short of his expectations.

On the 11th of December, 1865, not exactly satisfied with your apparent indifference in the case—for to this day never by word or act have you shown that you thought my interest had received any injury in your hands—I wrote you to know in what capacity you stood in the case, and in your answer you say "as your attorney here." I thought the answer under the circumstances at least cool; but as the case was to come on on the 2d January, 1866, after taking testimony on that day I thought it too late to discuss the matter, and then dismissed it to the present moment.

Allow me now to go back to the time of the sale under the mortgage which you held as trustee for the payment of $50,000. The sale was made, as you informed me, having been yourself present, the 21st June, 1865, and brought in all over $86,400, out of which you as my trustee were entitled to recover $50,000, and you satisfied me at the time of the sale by the assertion that my debt was secured. In view of Monroe's conduct as to the $45,000 note still unpaid, I urged you to follow the matter up and get the money in your hands. I find by my diary that I saw you as to the loan six different days between the 30th June and 26th July, and all these interviews were to stimulate you to collect the money, and I stated to you repeatedly my anxiety in the matter. As an excuse for not collecting the money you stated to me at one time "that the master had not received the money;" at another, that if the money was collected the master had a legal right to retain it one month before paying it over; and finally I became impatient and one day at my house at Red Bank, when you called with Mrs. Kermit, after asking you to go over and attend to the matter, you saying it was all

right and the money would be paid at the proper time, I asked you the question, "Is it not possible for Allen or Monroe to get this money without your knowledge?" and you answered, "It is not possible." After this I ceased my importunity, having done all I could to make you realize my interest and your own responsibility. After the explosion came, when Allen showed his hand and put you at defiance with $33,000 of my money in his pocket, and when Monroe had absconded, you told me you were sure you had given Halsey, the bank solicitor, notice (why did you notify the proper person, the master in chancery who was to receive the money for the sale?) that the mortgage had been transferred to you; but on the trial Halsey swore directly that you never had given him any such notice until after he had received the money, used a part of it to pay the debts of the bank, and you in your testimony, although questioned on the point, did not deny it, and the only notice you swore to giving Halsey was the one given at Little's suggestion and about the time the Allen suit was commenced. With these views as to what I consider the facts in the case I consider you owe me some explanation. As you did not hear the arguments of counsel, I may state that they took the following grounds, viz:

120 That in all the transactions you were Monroe's attorney; that putting the transfer of the mortgage on record or notifying the master that it was transferred would have shown that your client, Monroe, did not furnish the money he proposed to have furnished to relieve the bank, and that in fact the money was furnished by me, and for these reasons you did not give legal notice of the transfer because it would have injured your client, Monroe.

2. That if you had done your duty as trustee, by no possibility could Allen, individually or as president of the bank, have got into difficulty; that you so managed the matter that Allen thought he was acting right, and therefore his counsel claimed that it was only an error in judgment, and that every dollar Allen had received had been honestly appropriated to paying the debts of the Morris County Bank, and they claimed to have proved the fact.

3. That the $5,000 which you swore Monroe offered in payment of some part of the loan (what part I can't conceive, unless it was the $4,500 note, which was the only loan then due), which you refused to receive as a payment because he said it was not good then but that he would make it good, but still left on your desk, and you acknowledge on your testimony that when Monroe left your office you took the check and put in your safe and that it is there now, two of Allen's witnesses swearing that subsequently to the transaction you had told them that you had agreed to receive the check in payment for $5,000. The jury seem to have credited the testimony of the two witnesses and charged the $5,000 accordingly to your debit.

4. That the $4,500 was not covered by the mortgage, although you drew the paper for this object and told me it was covered.

To sum up the whole matter, it appears that although it was acknowledged by Allen that the 5-20 bonds I furnished produced on the 8th Feb., 1865, forty-seven thousand three hundred dollars ($47,300) cash, and that I had only received $20,000 cash in return, still, owing to the management of the trustee, I was only entitled to receive some $23,000 on the 20th May, 1867, and this verdict if confirmed by the higher court will, in my opinion, never be paid. If you had taken the legal measures your trusteeship actually demanded you should every dollar loaned would have been realized in 1865 in cash. Under these circumstances I feel that I have a right to call on you for explanations

of your conduct in this matter, and I hope you will deem it your duty to give them freely and candidly.

The great loss on this transaction will oblige me to change my manner of living and to withdraw from my family comforts they have enjoyed and which I can no longer afford them. If this loss, great as it is, shall prove to have been made in the "regular course of business," and such as is incident to business honorably and faithfully conducted, I shall make no complaint; but if on the contrary it has resulted from neglect of any kind on your part I shall certainly think I have at least an equitable claim on your consideration.

Very resp'y, your ob'd't serv't,

DAN. TYLER.

121 *Exhibit S for complainant—June* 28, 1872.—HENRY MORRIS, *special examiner.*

16 WALL ST., NEW YORK, *July* 16, 1867.

Gen'l DAN'L TYLER,

MY DEAR SIR: I have before me your lengthy epistle, dated Red Bank, N. Jersey, 1867, in which you state your recollections of the matters relating to the loans to James Monroe on the bonds and mortgages belonging to the Morris County Bank.

I informed you of all the facts relating to these matters as they came to my knowledge, freely and candidly, and have no explanations to make that I have not already made. I have no desire to discuss these matters over again now, or to enter into a lengthy correspondence on the subject, as I do not see that it can do any good to any one. But I have no intention either of shirking any responsibility which I may have incurred by my connection with those transactions. I have been out of town most of the time since the receipt of your epistle, or I would have replied to it sooner.

Yours, &c.,

ROB'T B. CAMPBELL.

Exhibit T for complainant.—June 28th, 1872.—HENRY MORRIS, *special examiner.*

Rec. June 5, 1868.

RED BANK, NEW JERSEY, *4th June*, 1868.

R. B. CAMPBELL, Esq.,
Counsellor at law, New York City:

MY DEAR SIR: The Allen case has resulted in a verdict of twenty-three thousand dollars or thereabouts against Thomas E. Allen, and the court has rendered judgment on the verdict, and I am now notified by Allen that he has applied to the court of common pleas of Morris County, New Jersey, for the benefit of the insolvent law, declaring his inability to pay his debts, and the case is put down for a hearing on the 13th day of July next. Under the circumstances I do not feel that it is my duty to spend any more money on pursuit of Allen, but I do feel that I have a right to fall back on you for the amount of the
122 loan and the interest, and all the attending legal expenses of the suit which was brought by your direction.

I give you this notice because I believe your interest is at least as much involved as my own in this application, and if you have any suggestions to make in the matter I shall be pleased to hear from you.

Very resp'y, your ob'd't serv't,

DAN. TYLER.

Exhibit U for complainant.—June 28, 1872.—HENRY MORRIS, *special examiner.*

16 WALL STREET, NEW YORK, *June* 5, 1868.

Gen'l D. TYLER:

DEAR SIR: Yours of the 4th inst. is received. I do not know that I have any interest in the application of Thomas E. Allen for the benefit of the insolvent law, and have no suggestions to make in the matter.

Yours, resp'y,

ROB'T B. CAMPBELL.

Exhibit V for complainant.—June 28th, 1872.—HENRY MORRIS, *special examiner.*

Rec'd July 29th, 1868.

RED BANK, NEW JERSEY, *27th July,* 1868.

ROBERT B. CAMPBELL, Esq., *New York City:*

MY DEAR SIR: I have already notified you that Thos. E. Allen had petitioned the Morris County court of common pleas of the State of New Jersey for his discharge as an insolvent debtor, under execution issued upon the judgment of the New Jersey supreme court against him in favor of myself, Dan'l Tyler. I now again notify you that the Morris County common pleas have set down the hearing of this petition for Tuesday, August 4th next, at 9½ o'c. a. m. I do this because, although the judgment above mentioned stands in my name, I regard my remedy for the debt it partially represents to be also, if not in the first instance, against you. You were my trustee and attorney, and to you was confided the duty of seeing that the money Allen borrowed was safe
123 and should remain safe. You assumed that duty and I look to you alone. By inattention to simple duties, which you were urged to perform, all benefit of the securities upon which the money was loaned was and remains lost, and I must proceed against you to obtain it.

Appreciating your position as trustee of my rights, you consulted and retained counsels and commenced suit against Allen in my name instead of your own. I expressed my preference for the use of yours, but under advice yielded to the course pursued. Now, before beginning the proceedings which your refusal to pay renders necessary, I tender you an assignment of the judgment against Allen, and also any and all securities which you may have taken from Thos. E. Allen or James Monroe for me, which assignment I am ready to execute and deliver whenever you shall notify me that you are ready to pay me the monies (and interest) I gave you, and which went from you as my trustee into the hands of Thos. E. Allen or James Monroe, or both of them.

Yours, very resp'y,

DAN. TYLER.

124 *Exhibits for defendant.*

EXHIBIT No. 5.

16 WALL STREET, N. Y., *Sept. 7th,* 1865.

DANIEL TYLER, Esq.:

DEAR SIR: I went yesterday to Morristown, and saw Mr. Theodore Little, who was recommended by Messrs. A. O. Zabriskie & Son, of

Jersey City, as the best lawyer in Morris County, and consulted with him about the proper course to be pursued. We had a long conference, and he wanted to see all the papers relating to all the agreements, which I am to copy and send to him. Under his advice I again drew a notice to the solicitor to retain any moneys proceeding from the mortgage, and left the paper with him to be served, as the solicitor was not then at home. After Mr. Little has decided upon the exact course that it is best to pursue, and has all the facts, he will probably send for Mr. Allen and have a talk with him, which I trust will bring him to his senses, and will make him pay up. He thinks that he may be liable to a criminal prosecution, but cannot tell until he knows all the facts.

Yours, truly,

ROBT B. CAMPBELL.

(Endorsed:) R. B. Campbell, 7 Sept., '65. Mr. Little will undertake the case; wants papers.

(Chas. W. Newton, U. S. examiner, June 16th, 1869.)

EXHIBIT No. 6.

16 WALL STREET, N. Y., *Sept. 9th*, 1865.

DANIEL TYLER, Esq.:

DEAR SIR: I wrote to Mr. Carow yesterday asking him to tell you that the copy papers wanted by Mr. Little had been forwarded to him, and that I had appointed Monday morning, at Morristown, for another interview; and I suppose that proceedings will be then immediately taken. I sent him on a check for $100 at the same time as the papers.

Yours, truly,

ROBT B. CAMPBELL.

(Endorsed:) R. B. Campbell, 9th Sept., '65. Had sent check of $100 to Mr. Little.

(Chas. W. Newton, U. S. examiner, June 16th, 1869.)

125 EXHIBIT No. 7.

16 WALL STREET, N. Y., *Sept. 12th*, 1865.

DANIEL TYLER, Esq.:

DEAR SIR: I went yesterday to Morristown in relation to the Morris County Bank matter, and had a full and long conference with Mr. Little. I placed before him the whole matter, with the agreements and correspondence relating to it. He says that he cannot see what defence can be made, or what excuse there is for the non-payment of the money due, and he does not think that Mr. Allen will dare to have a suit brought, and his proceedings made public. He promised to send for Mr. Allen at once, and see if he will not pay up, and if not he will commence a suit against the bank at once. This suit, he thinks, had better be in your name, as being the party making the loan on which the claim arises. I told him that you would prefer not to appear as plaintiff, but if your interests require it that I thought that that preference should not be exercised so as to incur any risk of loss, or to raise unnecessarily any legal questions. Mr. Little is president of the First National Bank of Morristown, and spoke of knowing you when president of the Morris Canal, or at least of knowing of you then.

I pressed upon his attention the advisability of promptness of action,

to which he entirely assented. He told me that he expected to be in New York on Thursday of this week, and that he would then call at my office.

Yours, truly,

ROB'T B. CAMPBELL.

(Endorsed:) R. B. Campbell, 12th Sept., '65. A'b't Tyler appearing as plaintiff in suit.

(Chas. W. Newton, U. S. examiner, June 16th, 1869.)

EXHIBIT No. 8.

16 WALL STREET, N. Y., *Sept. 14th*, 1865.

DANIEL TYLER, Esq.:

DEAR SIR: Mr. Little was to be in my office to-day, between 12 and 1 o'clock. I should very much prefer that you also should be there at the same time.

Yours, truly,

ROB'T B. CAMPBELL.

(Endorsed:) R. B. Campbell, 14 Sept., '65. Little to be in Campbell's office 12 o'clock; wishes Tyler present.

(Chas. W. Newton, U. S. examiner, June 16th, 1869.)

126 EXHIBIT No. 9.

16 WALL STREET, N. Y., *Sept.* 21, 1865.

GEN'L TYLER:

DEAR GEN'L: I sent word to you through Charles that I understood that Allen had consented to let Monroe use the stock in his (A.'s) hands if he could effect a settlement and payment with you. Monroe says that he has an offer of $40,000, or thereabouts, for about 1,300 shares, made up as follows: 550 in your hands, 280 in Moore & Brown's hands, and 469 in Allen's hands. Of this sum he proposes to pay you off either $35,000 or 37,500 in cash, as he can agree with M. & B. If only $35,000, he must give you collaterals in the hands of M. & B. for the other $2,500. I wrote to him yesterday, telling him I wanted to see him and make my report to you, and he wrote back saying we have agreed upon terms, &c.; to-morrow I'll call and give you particulars. But it is now a quarter of two and he has not been in, so that I write this to you without having the particulars. I will write to you again as soon as I get them.

Yours, truly,

ROB'T B. CAMPBELL.

(Endorsed:) R. B. Campbell, 25 Sept., '65. As to Monroe's offer for settlement.

(Chas. W. Newton, U. S. examiner, June 16th, 1869.)

EXHIBIT No. 11.

26 WALL STREET, N. Y., *Oct. 26th*, 1865.

GEN'L TYLER:

DEAR GEN'L: On Tuesday last, when you left my office, I was endeavoring to induce Mr. Monroe "to make an offer of judgment," and

served the summons on him for that purpose. He did not on that day say whether he would or not, but would decide yesterday.

He came in yesterday and decided not to confess the judgment, and was quite excited over your taking a course which he said would prevent his being able to do anything. The summons having been served the suits are commenced, and, as I understand from Charles Carow that you will probably be in town on Tuesday or Wednesday next, I will endeavor to have the complaints drawn for you to swear to. When you come in town I would like you to find out from Schuchard or some one else what this coal stock of Monroe's is worth.

Yours, truly,

ROBT B. CAMPBELL.

(Endorsed:) R. B. Campbell, 26 Oct., '65. As to Monroe's confessing judgment.

(Chas. W. Newton, U. S. examiner, June 16th, 1869.)

127 EXHIBIT No. 12.

16 WALL STREET, N. Y., *Oct.* 27, 1865.

GEN'L TYLER:

DEAR GEN'L: On the 24th inst., the day that your were in town, I served the summons on James Monroe in your 2 suits against him, one on the $4,500 note, and another on the $25,000 contract. He called in yesterday, and I gave him to understand that I thought that if he or Allen would make the whole transaction a clear 7 per cent. matter, and would pay a portion now and secure the rest satisfactorily at short time, that you might be willing to agree to such a proposition, although I did not profess to speak by authority.

He spoke about getting certificates of deposit in the bank based upon money or securities to be deposited by the Allens. But I doubt very much whether they can be induced to pursue this course.

The coal stock that he has, from what I can learn from other parties interested in it, appears to have some considerable value. It is called the Tunungwant Co.; the lands are about 387 acres; the mine will drain itself; the opening is about 1½ miles from a depot on the Pittsburgh, Bradford & Buffalo R. R., and about 8 miles from Bradford; a team road is now being built to connect the mine with the depot, which is to be completed in 3 or 4 weeks, and there is, I understand, about 1,000 tons of coal mined.

Mr. Schuchard is president of a coal company whose lands are about 3 miles distant from this tract, and as I believe that you know him well, you could probably get a good idea of the value of this property from him. Cesar A. Robert, of 42 Barclay st., is president, and Frank Otard, of Beaver st., is treasurer. $100,000 of the stock of that co. has been placed by Monroe in the hands of Allen to enable them to raise the money to pay off your claims. The mine is in Lafayette Township, McKean Co., Pa.

The commencement of these suits has driven Monroe to a more active endeavor to make the Allens settle your claims.

Yours, truly,

ROBT B. CAMPBELL.

(Endorsed:) R. B. Campbell, 27 Oct., '65. Had seen Monroe. Can't stock, &c.

(Chas. W. Newton, U. S. examiner, June 16th, 1869.)

EXHIBIT No. 13.

16 WALL STREET, N. Y., *Nov. 2d*, 1865.

GEN'L TYLER:

DEAR GEN'L: I wrote to Mr. Little, stating that you desired him to go on and get the papers in order at once, and that if it would expedite matters at all that you would go on to Morristown, and sign or swear to any papers that were needed. I received to-day a letter of which I send you herewith a copy.

Yours, truly,

ROB'T B. CAMPBELL.

128 (Copy.)

MORRISTOWN, *Nov.* 1, 1865.

R. B. CAMPBELL, Esq.:

DEAR SIR: Yours is rec'd. I wrote Theo. Allen declining his proposition. Have heard nothing from him or his father since. I have caused the records of our county to be examined and find that Theo. E. Allen holds no real estate in his own name. This I consider an important fact. Am preparing the papers as fast as I can; will write you as soon as I can put them in shape.

Yours, truly,

THEO. LITTLE.

(Endorsed:) R. B. Campbell, 2d Nov., 1865, and copy of Little, 1st. Nov., as to coming suit.

(Chas. W. Newton, U. S. examiner, June 16th, 1869.)

EXHIBIT No. 14.

16 WALL STREET, N. Y., *Nov. 10th*, 1865.

GEN'L TYLER:

DEAR SIR: The accompanying affidavit was to-day received from Mr. Little too late for the mail to you, so I will send it to the boat and the care of Joe Lemon.

He has referred only to the $25,000 contract; I suppose that that is intentional, but will write to him to-day.

Yours, truly,

ROB'T B. CAMPBELL.

P. S.—Make the affidavit before a master in chancery, a supreme court commissioner, or a justice of the peace.

C.

(Copy.)

MORRISTOWN, *Nov. 9th*, 1865.

ROB'T B. CAMPBELL, Esq.:

DEAR SIR: I enclose the affidavit to be made by Gen'l Tyler; it is long, but it seems to me best to set out the transaction pretty fully. I think that you had better add your own affidavit to the effect that the matters set forth in his, so far as relates to you and your actions, are true; that Allen was present when the bonds were handed over, and knew of the terms of the loan, and of the assignment of the mortgages to you for Gen'l Tyler; that you attended the sale of the property; was told that the money would not be paid over under 30 days, and

when you enquired again for it it had been paid to Allen; that he received it without your knowledge or consent, and that you have been trying in vain to induce him to pay the claim. Fill up the amount of the claim in the general's affidavit with $25,000, and the interest from the date of the loan. I see by a careful reading of the agreement that Monroe only agreed to pay $25,000 in cash; for the balance he agreed to assign 300 shares of M. C. Bank stock. This the gen'l holds and must look to the balance of the loan, as I read the agreement of Feb. 1, 1865, in connection with the proposal for the loan, January 27. On receiving your affidavit and the gen'l's I will add my own if I conclude it to be best, and then present them to a judge.

129 You can make the affidavit before a New Jersey commissioner in N. Y., or come to Jersey City and make them before a master in chancery, supreme court commissioner, or justice of the peace.

Yours, truly,

THEO. LITTLE.

(Chas. W. Newton, U. S. examiner, June 16th, 1869.)

EXHIBIT No. 15.

(Copy.)

MORRISTOWN, *Nov.* 25, '65.

ROB'T B. CAMPBELL, Esq.:

DEAR SIR: I to-day placed in the hands of our sheriff a capias for the arrest of Thomas E. Allen for the amount due Gen'l Tyler. The process is returnable to our February term of the supreme court.

Yours, truly,

THEO. LITTLE.

Above is a copy of a letter received to-day.

Y'rs,

R. B. C.

(Endorsed:) Copy Theo. Little, 25 Nov., '65. Has caused arrest of Allen.

(Chas. W. Newton, U. S. examiner, June 16th, 1869.)

EXHIBIT No. 16.

1 O'CLOCK, WEDNESDAY, *No.*

R. B. CAMPBELL, Esq.:

MY DEAR SIR: Have you anything for Mr. Little as to the service of the capias? Please answer.

Y'rs, truly,

L. TYLER.

NOVEMBER 30.

I have not heard from Little, but I have heard from Mr. Norton, who got it from Monroe, that he had been arrested and had given bail in the sum of $60,000.

Yours, truly,

ROB'T B. CAMPBELL.

(Endorsed:) R. B. Campbell, 30th Nov., 65. Reporting sum of Allen's arrest and bail.

(Chas. W. Newton, U. S. examiner, June 16th, 1869.)

EXHIBIT No. 17.

16 WALL STREET, N. Y., *Dec.* 11, 1865.

GEN'L TYLER:

DEAR SIR: Your note of this day is received. At your request I made enquiries as the best counsel to be employed in the claims arising out of the Monroe-Allen loan, and engaged Mr. Little for you, who was the best man that I could find. I consider myself your attorney here in the matter, and no efforts of mine will be wanting to bring the matter to the quickest and most satisfactory conclusion.

130 You will recollect that on one occasion, when Mr. Little, you, and I met, Mr. L. suggested that he should write direct to you in relation to these matters, and you requested that the correspondence should go through me. This can be changed at any time that you desire. I have never been aware of any intimation from him that he would prefer to communicate through me, unless his answer to your note requesting a private interview may be so considered. The present state of affairs is that he is your lawyer who is managing the suit, and I am ready to afford whatever assistance I can in it.

Yours, truly,

ROB'T B. CAMPBELL.

(Endorsed:) R. B. Campbell, 11 Dec., 1865.

(Chas. W. Newton, U. S. examiner, June 16th, 1869.)

EXHIBIT No. 18.

(Copy.)

N. Y., *Dec.* 26, 1865.

Gen'l TYLER:

DEAR GEN'L: On the other sheet hereof is a copy of a letter which I to-day received from Mr. Little. He asks for the original papers, and I think that the original $25,000 contract is in your possession. Will you please forward it to him, or send it to me and I will do so. I shall write to him and forward the other original papers in my possession this afternoon.

Yours, truly,

ROB'T B. CAMPBELL.

(Copy.)

MORRISTOWN, *Dec.* 25, 1865.

ROB'T CAMPBELL, Esq.:

DEAR SIR: Allen has given me notice of taking affidavits to disprove the allegations on which the order for bail was made Jan'y 2, 1866. I would be glad to have you present, but it is especially important that I have the original papers in your hands to use on that occasion. Please send them to me.

Yours,

THEO. LITTLE.

(Endorsed:) R. B. Campbell, 25 Dec., '65.

(Chas. W. Newton, U. S. examiner, June 16th, 1869.)

EXHIBIT No. 22.

M'CH 8, 1866.

Gen'l TYLER:

DEAR GEN'L: I have just been in to see Mr. Brown, but did not find him. Moore told me that the stock they held included a certificate for 73 shares in Monroe's name which he did not want to have transferred, but it was transferred with the rest. I believe that the cert. for 100 shares that you hold is all that now stands in Monroe's name, and Norton holds his proxy for that.

Is it best to have this transferred? Please direct me. As it
131 stands now he has Norton to look after his interests, which, it seems to me, cannot be hostile to yours.

Yours, truly,

ROB'T B. CAMPBELL.

(Endorsed:) R. B. Campbell, March 8, '66. As to transferring 100 shares Morris County bonds.

(Chas. W. Newton, U. S. examiner, June 16th, 1869.)

EXHIBIT No. 23.

16 WALL STREET, N. Y., *March* 14, 1866.

Gen'l TYLER:

DEAR GEN'L: I went yesterday to Morristown to attend a meeting of the stockholders of the M. Co. Bank. Before going in to the meeting I had time to call on Mr. Little, who said that the motion on the return of the writ against Allen was argued at Trenton two weeks ago before the two new judges, and he expected that it would be decided yesterday, and that he would write to me as soon as he heard the decision. The third judge, whose name I do not now recollect, said that he was related to you, so that he did not sit on the case. Mr. Moore represented the stock transferred to Mr. Brown, and took charge of the meeting. Allen presented a statement of the bank, by which, after reducing the assets to what he said would certainly be realized from them, showed assets $44,108.75 (including an item of $4,320.43 cash on hand)—

The liabilities amounted to	$5,737 87
Leaving surplus of	38,370 88

A committee of three was appointed to examine into the affairs and transactions of the bank since the last suspension. The committee were E. I. Brown, of New York, and Messrs. Voorhies & Bell, of M'town.

I did not have the 100 shares of stock transferred, as I thought it were for your interest to have Mr. Norton interested in representing it. and the transfer can be made at any time that you direct it.

Yours, truly,

ROB'T B. CAMPBELL.

(Endorsed:) R. B. Campbell, 14th March, '66. Campbell and Moore attended meeting of directors Morris County Bk.

(Chas. W. Newton, U. S. examiner, June 16th, 1869.)

132 EXHIBIT No. 26.

16 WALL STREET, N. Y., *June* 4, 1866.

Gen'l TYLER:

DEAR GEN'L: Yours of 29th May came to hand on Saturday, 2nd inst., and I wrote to Little asking about the case, and sen' him the certificate for 100 shares to be transferred to you.

I do not expect to be able to leave the office before 2 o'clock.

Yours, truly,

ROB'T B. CAMPBELL.

(Endorsed:) R. B. Campbell, 4 June, '66. Has written letter as to case, and transferred 100 shares Morris Co. B'k s'k.

(Chas. W. Newton, U. S. examiner, June 16th, 1869.)

EXHIBIT No. 27.

16 WALL STREET, N. Y., *Sept.* 25, 1866.

Gen'l D. TYLER:

DEAR GEN'L: Herewith I send you a copy of a letter received this afternoon from Mr. Little. Of the papers he asks for I have the note for $4,500, and the letter accompanying it of April 17th; but I have not the original proposition or the $25,000 contract, though I have a copy of the latter. You had better take with you all the papers and letters that you have in relation to these transactions up to Sept. 1, 1865.

Yours, truly,

ROB'T CAMPBELL.

(Copy.)

MORRISTOWN, N. J., *Sept.* 24, 1866.

ROB'T B. CAMPBELL, Esq.:

DEAR SIR: Our cause is noticed for trial next week on Tuesday. I fear I will not dare to venture to take the burden of it, though my health is better than it has been. I am trying to procure suitable counsel to assist. Of course we will want you and the general as witnesses. Bring with you all the original papers relating to the loan which I have not already. Bring note for $4,500 and Monroe's letter of Ap., 1865, in reference to, also his original proposition for, loan of $30,000. Let me know if I can rely on your being here.

Yours, truly,

THEO. LITTLE.

(Endorsed:) Theodore Little and R. B. Campbell, 25 Sept., '66. Asking for papers and suggesting presence at trial 1 Oct.

(Chas. W. Newton, U. S. examiner, June 16th, 1869.)

133 EXHIBIT No. 1.

NEW YORK, *Jan'y 27th*, 1865.

Proposition of James Monroe to Daniel Tyler for a loan of $30,000.

I will place in the hands of Robert B. Campbell a certain mortgage given by T. T. Wood and wife to the Morris County Bank, for the sum

$97,000, and a certain lease of the Hibernia Mines (the fee of which is covered by said mortgage) made between T. T. Wood and the Trenton Iron Company, and by said Wood assigned to the Morris County Bank as collateral security for the payment of the above-mentioned sum.

It is agreed that upon the said Daniel Tyler loaning the said sum of money, he shall have the right within six months from the time of making such loan to elect whether he will at the expiration of said six months (or before then if the title to the land is procured by me) take one-quarter interest in said lease, and the land over which the same extends, and 300 shares of the capital stock of said Morris County Bank (shares $50 each, par value), or else $25,000 in money, with interest thereon, and said 300 shares of stock, in payment of such loan. And I also agree to buy the said 300 shares of stock for the sum of $10,000 at the expiration of six months from making the said loan if the said Tyler shall desire to sell the same for such price.

EXHIBIT No. 2.

Rec'd Jan. 29, '65 (Sunday?), Saturday p. m.

MY DEAR SIR: I am pretty well satisfied that the lease and the mortgage will be security for 25 to $30,000 loan, and I now purpose, on Monday or Tuesday next, to offer to loan Mr. Monroe $25,000 of 5.20s for six months, on terms varying a little from his proposition. I would like to know—if perfectly proper—whether Mr. Monroe's party has secured the loan in Newark; for, if so, my loan will lose its importance.

Very truly, yours,

DAN'L TYLER.

R. B. CAMPBELL, Esq., *Wall-Street.*

EXHIBIT No. 3.

NEW YORK, *30th Jan'y*, '65.

JAMES MONROE, Esq.,
New York City:

SIR: I am confined to my room to-day from, as I hope, temporary illness. I will accept your proposition of the 27th inst. substantially as made, with this exception: that instead of thirty thousand ($30,000) dollars, I will hand over to you twenty-five thousand ($25,000) of United States 5.20 coupon bonds, with all the undue coupons
134 attached, which I consider in value full thirty thousand ($30,000) dollars. If this offer is accepted I shall consider you chargeable with expense of the papers and all other incidental expenses. I shall also expect Mr. Campbell will investigate the titles, so far as he may deem necessary, and also that he will put the agreement in form.

Very resp'y, yours tr'y,

DAN'L TYLER.

EXHIBIT No. 4.

16 WALL ST., N. Y., *Feb.* 16, 1865.

GEN'L DANIEL TYLER:

DEAR GEN'L: I send you herewith the original agreements between James Monroe and yourself and the promissory note for $20,000. Also the certificates for the 450 shares of Morris County Bank stock. This

stock is not to be transferred until Aug't 1st without the consent of Mr. Monroe. I am having a copy of the last agreement made, and will send it to you when done.

Yours, truly,

ROB'T B. CAMPBELL.

EXHIBIT No. 28.

NEW YORK, *8th Feb'y*, 1865.

R. B. CAMPBELL, Esq., *Wall St., N. Y.:*

MY DEAR SIR: As to furnishing Mr. Monroe & Mr. Allen twenty dollars ($20,000) for 6 m's on their joint and several note, secured by "the mortgage," I will agree to deliver them eighteen thousand ($18,000) dollars of 5.20 coupon bonds and receive therefor their notes as above for twenty thousand dollars ($20,000) and one hundred and fifty (150) shares in the capital stock of the Morris County Bank, the shares to be put into your hands as trustee.

Very truly, yours,

DAN'L TYLER.

EXHIBIT No. 29.

NEW YORK, *24th April*, '65.

J. MONROE, Esq.:

MY DEAR SIR: I can give you a letter to Vice-President Foster, and if he cannot conveniently go with you to the Treasury Dep't he will probably endorse the letter so as to assist you. I can give you a letter to another person who can probably serve your interest. As your letter to me was dated the 22d and only rec'd last evening, I fear you have gone to Washington. Let me know whether you wish my assistance.

Yours, resp.,

DAN'L TYLER.

I have answered this.—MONROE.

135 EXHIBIT No. 30.

NEW YORK, 14*th July*, '65.

R. B. CAMPBELL, Esq., *N. York:*

MY DEAR SIR: Please find enclosed a proposition from James Monroe as to the payment of the debts due me through you. I consent to the proposition, provided the $4,500 is paid and the bank officers secure the payment of the check, as proposed, for the balance to be due me after the payment of twenty thousand dollars cash. I leave you to carry out this new arrangement, and authorize you to cancel the contract and note, which I with this deposit in your hands.

Very truly, y'rs,

DAN'L TYLER.

EXHIBIT No. 31.

NEW YORK, *July* 14, 1865.

GEN. TYLER:

RESPECTED SIR: The money due on the Wood mortgage has been paid in to the master, and it is probable that he will pay it over before

your claim becomes due. Will you permit us to place the sum due you (less twenty thousand dollars, which we will pay you down on receiving it from the master) in the First National Bank of this city, in the name of the Morris County Bank, to remain there as a deposit of said Morris County Bank until the whole sum due you becomes due, for which the Morris County Bank shall give you a check on said First National Bank for said sum, dated the day said sum due to you becomes payable? If you agree to this proposition the Morris County Bank agrees to keep on deposit at the First National Bank aforesaid a sum at no time up to the payment of said check less than the sum for which said check was given.

Yours, respectfully,

JAMES MONROE.

EXHIBIT No. 32.

RED BANK, *7th A'g't*, '65.

R. B. CAMPBELL, Esq.:

MY DEAR SIR: I could loan the bank, say, $30,000 of the amount coming to me if it could be made safe and the consideration attractive, and would let the loan run 90 days, and perhaps renew it for 90 days more, but the transaction must be with the bank, perhaps endorsed by Allen, and the use to which the money is to be put must be fairly and clearly stated in the application for the loan, and I must have, under Allen' signature, a statement of the bank at the time application is made for the loan. It is my interest to have the bank fairly started, and I am willing to stretch a point to do this; but if I make a
136 loan I want a clear transaction, well understood, and one the bank can meet. If the bank wants the money, let application be made in writing, with a full statement of the condition of the bank, the application of the money to be loaned, and I will decide the matter at once. I have no objection to taking some more stock as a consideration for the loan. Communicate the results of your interviews with Monroe and Allen, and oblige—

Yours, tr'y,

D. TYLER.

EXHIBIT No. 33.

I understand Mr. Little is to be in the city this a. m. I would like to see him, with you. I shall be at 76 South street all day.

Thursday a. m., Sep. 14, 1865.

D. TYLER.

EXHIBIT No. 34.

RED BANK, *Monday, 17th Sept.*, 1865.

R. B. CAMPBELL, Esq.:

MY DEAR SIR: I am, of course, anxious to know the result of your interview with Monroe and what you hear from Mr. Little. Carow will not return for a day or two, and therefor' I must depend on your letters by mail, which should be mailed by 2 o'c. p. m. to reach me same evening.

If I can do any good by coming up I will come, of course; but as I

do not wish to perplex you in the business, I prefer not to come until I hear from you. Good or bad, keep me posted up.

Yours, truly,

DAN. TYLER.

P. S.—I think the $4,500 was obtained by Monroe under false pretences, and that he can be held accordingly. He borrowed the money to purchase bonds for his and my benefit, and this was the consideration: he told me he had purchased bonds with the money, to put the Morris County Bank under the national law, and he did not do it. He lied from beginning to end.

EXHIBIT No. 35.

MONDAY a. m—10 o'c.

MY DEAR SIR: I came up this m'g to see if I can do anything in the Monroe matter, and I shall be found at Carow's office. Is it not possible our best plan may be to help Allen start his bank? If Allen and Monroe have quarreled, and the entire control is in Allen's hands, is it not very much for Allen's interest to get us to help him, if he can? I would like to see you to talk over this matter.

Yours, truly,

D. TYLER.

R. B. CAMPBELL.

137 EXHIBIT No. 36.

RED BANK, *6th Nov.*, 1865.

R. B. CAMPBELL, Esq.,
16 Wall st., N. York:

MY DEAR SIR: Your favor of the 2nd inst. was received on Saturday, and I answer by the first mail.

Mr. Little remarks that, by an examination of the records, he finds "that Tho's E. Allen holds no real estate in his own name," and he says, "This I consider an important fact." I suppose we are to infer from this that Mr. Allen thinks if we get a judgment we can't collect anything. Certainly not a briliant prospect with such a rascal as Tho's E. Allen has shown himself. But I can't see as this fact, uncomfortable as it is, should prevent us from prosecuting Tho's E. Allen. He has got our money, and it appears to me that he must account for it or go to prison, and he will not go to prison and disgrace to serve the Morris County Bank, of which we hold 550 shares of stock. It strikes me we must go ahead as rapidly as possible, get judgment against Monroe, and sell his 100 shares. I would sell these shares as early as possible, and compel Allen, if he hesitates, to transfer them. It appears to me, if you consider Mr. Norton your friend, as he must know more of Monroe and his affairs than you do, that you should ask an out and out conference with him, and that he should tell you all he knows, and what became of the $5,000 check (I mean its avail; we know Monroe got the check), and all about Monroe's affairs so far as he, Norton, knows. Don't let Mr. Little go to sleep; we want a live man at Morristown to keep things moving. I don't believe Allen can keep his property covered up, particularly after committing such a fraud as he has been trying to commit. He told Mr. Little that this property was put in his wife's name some years ago for an object, and I should think such a confession would make the property liable for a swindling debt, if judgment

is obtained against him. But I don't believe Allen will stand suit. He is too old and timid, and his sons are too well connected to let their father be disgraced for the Morris County Bank. Another thing, if Allen stands suit we must, if possible, get the bank into other hands, through the chancellor if possible; it strikes me, with the papers in our hands, we can get the chancellor to interpose and enjoin the bank. Do look into this matter and see how we stand. The Allens don't mean to lose control of the bank.

Yours, truly,

DAN. TYLER.

P. S.—Keep me informed of everything that transpires any way connected with our case.

D. TYLER.

138 EXHIBIT No. 37.

RED BANK,
9 *o'c., Friday p. m.*, 10 *Nov.*, 1865.

R. B. CAMPBELL, Esq.:

MY DEAR SIR: I have this moment rec'd Mr. Little's bill of complaint, if that is the legal term, and it don't strike me favorably. I had supposed—erroneously, of course—that a much stronger bill would have been drawn. The fact that you paid the bonds into the hands of Allen is not set forth, which I should think an important fact; that you looked upon it as a payment to and a transaction for the bank; that Allen was present, would not consent to the transfer of the mortg' until $50,000 or its equivalent was paid over to the bank, and that on receiving the $45,000 bonds he did consent, &c., &c. Perhaps your affi'v't will embrace this and other important matters; and, therefore, it is not important that they be included in mine. I am called on to swear that you "caused enquiry to be made of said solicitor" &c., &c. I have no knowledge of this fact. There are other parts which, with the slight reading I have been able to give it, I don't understand. Now it is too late to execute the document, and *sent* it up to-day. Monday morning I will be at your office by 10 o'c. a. m., and in the mean time will study the paper, and if you will meet me at 10 o'c. we will discuss it fully, and I will go over to Jersey City. Find out if you can the proper person there to take the acknowle'g't, and perhaps you can have your paper drawn up, so that we can execute both and send them to Mr. Little Monday ev'. I don't see well what Mr. Little can swear to, except perhaps that Allen told him his property stood in his wife's name for a particular object.

Y'rs, tr'y,

D'L TYLER.

P. S.—On reflection I send you back the paper so that you examine it and draw your affidavit to cover the weak spots in mine, or make alterations and copy anew for me to sign. I don't like the paper at points I here marked in the margin (*).

Tr'y, &c.,

D. TYLER.

1st. * Monroe did not have it in his power to comply with *the* Tyler's right to take ½ interest. He let the title pass out of his hands, and Tyler's only security was the judgment. Allen knew this. Tyler had to take bank shares and the $25,000 int.

2d. * Bonds delivered to Allen.
3d. * Was present, rec'd the bonds, sold them, and rec'd the check for the same.
4th. * This more proper for your affidavit.
5. * I can hardly swear that the master had actually paid over, &c.

139 EXHIBIT No. 38.

2 O'C. P. M., 6TH DEC., '65.

MY DEAR SIR: I do not understand why Mr. Little does not answer your letter. It is very important that we know something of what he has done, and the effect and import of his action. I would like you to telegraph him, to stir him up.

Yours, truly,

DAN'L TYLER.

R. B. CAMPBELL, Esq.

EXHIBIT No. 39.

NEW YORK, *6th Jan'y*, '66.

R. B. CAMPBELL, Esq.:

MY DEAR SIR: To be ready for your examination on Monday next, if you are not sure that Allen was present in your office when Monroe stated that the reason he could not sell the bonds purchased with the $4,500 and repay the amount, was that he could not get a board meeting the day before to authorize this sale. If you are not sure on this point, why not see Monroe and get him to post up on the point. I think the time was when they proposed to extend the loan on a certificate of deposit, which Allen was willing to give, and for which he furnished the statement as to the condition of the bank. Allen denies ever having heard of this $4,500 loan, as you will recollect in his testimony. It is a lie; he knew all about, and I think Monroe will tell you so, if you can see him and not let him know what you are at.

Yours, truly,

D. TYLER.

EXHIBIT No. 40.

NEW YORK, *9th March*, '66.

R. B. CAMPBELL, Esq., *Wall street:*

MY DEAR SIR: Let the shares stand in Monroe's name until the meeting next Tuesday, and let Norton represent them. He could not appear for Monroe without those shares, as they are all at this time that are in Monroe's name. After the meeting on Tuesday, if you see no reason for not doing so, I would have them transferred to my name.

I leave at 12 o'c. to-day. Brown will try hard to get a settlement. I have talked with Mr. Carow, and you may, in my absence, act on his advice and judgment.

Very truly,

DAN'L TYLER.

140 EXHIBIT No. 41.

Mr. Monroe asserts that the assets are worth cash $85,000, against $88,000 stock issued.

Loan $4,500 of 60 days. I agree to put the Morris County Bank under the national law as a national bank by the 20th May, with 200,000

capital, and bonds deposited with the U. S. Bank Dept. for $70,000 notes of the U. S. national banks.

(Endorsed:) Mr. Monroe's stat't asking loan 4,500. Loan granted.

EXHIBIT No. 42.

First 6,000 in Wells' hands collected on.

Whole capital, $90,500	1,810 shares at	$50
Owned by bank, $3,500	70	do
" J. M., 58,500	1,170	do
Assetts		$186,000*
Debts	82,000 ($36,000 held by T. M.)	

*Besides a mortgage for $6,000 held as collateral.

Character of assetts.

Mort. of T. T. Wood (on mine, &c.)	$97,000
Judg't ag't Decatur Bank and 9 bondsmen, with mortgage for $13,000	18,000
Balance due on Freeman Wood's mort	17,500
Small mortgages, am'g to about	18,000
Bills rec'ble (good), about	19,000
Its own stock held by bank	3,500
Bills rec'ble, worth from 20 to 40 %, $25,000	7,500
Freeman Wood's mort	6,000
Real estate	7,000
	$193,500

Debts.

State Bank, Newark	$15,000
Iron " Morristown	9,000
Wells	9,000
Depositors	16,000
Bills on which money borrowed	23,500
Dividends not drawn	600
Salaries	1,500
	$84,600

141 EXHIBIT No. 43.

JAMES MONROE, Esq.:

D. SIR: I have thought over our talk had yesterday, and I now protest against using the lease or mortgage for a less amount than $50,000. If you cannot have that amount, then we will drive the sale under the mortgage and pay our debts that way; for the com. in Newark has declined to loan on the securities (*thair* has been some under-current come in th*air*), and I shall not come in on Saturday, as I have an engagement here that I had forgotten, unless I hear from you by stage this night showing some pos*a*tive neces'ity for me to come. I will write Mr. Campbell this day.

T. E. A.

FEB'Y 3, 1865.

EXHIBIT No. 44.

Statement of Morris County Bank, Morristown, N. J.

ASSETS.

Bills receivable		$17,370 17
In hands of A. W. Cutler (collection)		2,816 19
Mortgages.		
C. A. Kenause	$1,500 00	
D. Evans	350 00	
S. D. Coy	813 00	
		2,663 70
Real-estate lot in Newark	$2,500	
lot in Morristown	2,750	
		5,250 00
Over-drafts		474 74
Due by bank, State Bank, Newark	2 81	
Union Bank, Dover	195 45	
Railroad B'k, Decatur, Ill		
Mortgage security & good endorsers	19,840 00	
		20,038 26
Estate of Theod. T. Wood		21,685 00
Township scrip		470 05
Cash on hand		16,320 36
Total good assetts		87,088 47
Rockaway M'f'g Co. failed and affairs in hands of receiver. For this claim not likely to receive more than the am't of notes in the hands of their receivers		36,952 60

LIABILITIES.

	Due depositors and clerks, rent, &c	17,963 75
142	Circulation in hands of receiver of the Rockaway M'f'g Co., for which we hold as off-set claim of 36,952.60	4,243
		22,206 75
	Capital stock	90,500
	Owned by bank	3,500
		87,000

I certify that the above is correct, to the best of my knowledge and belief.

THOMAS E. ALLEN, *Prest.*

AUGUST 11, 1865.

EXHIBIT No. 45.

N. Y., *Sep.* 1, 1865.

THOS. E. ALLEN, Esq., *Prest.*, &c.:

You will please transfer to R. B. Campbell, or his order, all stock of the Morris County Bank in which I am interested, and give him the certificates.

JAMES MONROE.

EXHIBIT No. 46.

MORRISTOWN, *Sept.* 2, 1865.

R. B. CAMPBELL, Esq.:

D. SIR: I cannot assigh̃n the M. C. Bank stockes standing in my name to you at this time, for the following reason: When I was purchasing stock from Mr. Monroe, he did agree that when we had bought a majority of the stock that he would then furnish the bank seventy-five thousand dollars to pay its indebtedness with, and that I should hold the majority of the stock thus bought until he did furnish the 75,000 dollars; and I have pleged myself to the directors who did sell thāir stock that I would hold the stock as per said agreement.

THOMAS E. ALLEN.

EXHIBIT No. 47.

NEW YORK, *Aug.* 15, 1865.

R. B. CAMPBELL, Esq.:

DEAR SIR: I will sell to Gen. Tyler a certificate of deposit for $25,000 in the Morris County Bank, payable at three months from the date thereof, and bearing interest at 6 per centum per annum, for the sum of $24,250.

This loan to be in substitution of his present loan on the Wood mortgages.

Yours, respectfully,

JAMES MONROE.

143 EXHIBIT No. 48.

Rec'd Oct. 2, 1865. MONDAY, 12 o'cl'c'.

MY DEAR SIR: You gave Mr. Little a copy of an early statement of the Morris County Bank, on which you endorse a part made by Mr. Allen, and the balance by R. B. Campbell from Mr. Allen's lips, or something to that effect. Mr. Little remarked that he would like to see the original, and how much of it was in Allen's handwriting. Will you take it with you and show it to him at 2 o'cl'c'?

Y'rs, truly,

DAN. TYLER.

R. B. CAMPBELL, Esq.

EXHIBIT No. 49.

Rec'd Nov. 1, 1865.

I propose to pay down $5,000, and in 60 days pay $5,000 more. The proceedings to remain without action being taken. At the expiration of 60 days, and when the last above-mentioned $5,000 is paid, I am to

give you certificates of the bank for the balance due you, for equal amounts, payable in 2 months, 4 months, and 6 months from that date. The total amount to be paid by the Allens on this agreement shall be $34,140.00, and I will pay $3,500 more as soon as I can; but this last payment must not be mentioned to the Allens.

JAMES MONROE.

EXHIBIT No. 50.

Rec'd Nov. 13, 1865.

1st. It strikes me that the Allen & Monroe's note for $20,000 ought to be recited in the bill. This made up the $50,000, for which amount Allen stated he was authorized to transfer the mortgages; that he would not do it for less; and this fact, seems to trace the entire loan to the bank.

2d. For similar reasons the $4,500 note ought to be recited. Allen was present when Monroe stated that this money had been used to purchase U. S. bonds ($80,000) to put the Morris County Bank under the national law, and having determined it was not for the interest of the bank to become a national one, they were only waiting for the b'rd of directors to vote the sale of the bonds, when they would be sold, and I would the $4,500 and interest. It strikes me this $4,500 transaction is important, as it makes up more than $50,000 cash, for which amount Allen told you he was authorized to transfer the mortgage?

3d. Allen, I am sure, was present when Monroe told you the cash received for the mortgages was deposited in the Iron County Bank.

4. Who was the $4,500 paid to? Was not Allen present when this money was paid?

5. The fact that Allen, when he paid the $20,000, stated that it was from his own money, and that nothing had been realized from the sale of the mines, is important to the bill.

144 EXHIBIT No. 51.

Summons for a money demand on contract.

Supreme court.

DANIEL TYLER, PLAINTIFF,
against
JAMES MONROE, DEFENDANT.

TO JAMES MONROE:

You are hereby summoned and required to answer the complaint which will be filed in the office of the clerk of the city and county of New York in this action, and to serve a copy of your answer to the said complaint on the subsriber, at his office, No. 16 Wall street, in the city New York, within twenty days after the service of this summons on you, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, the plaintiff in this action will take judgment against you for the sum of twenty-five thousand dollars, with interest from the first day of February, one thousand eight hundred and sixty-five, to the first day of August, 1865, at the rate of six per centum per annum, and after that date at the rate of seven per centum per annum, besides the costs and disbursements of this action.

Dated Oct. 24, 1865.

ROB'T B. CAMPBELL,
Plaintiff's Attorney.

Supreme court.

DANIEL TYLER
ag't
JAMES MONROE.

CITY AND COUNTY OF NEW YORK, *ss:*

Daniel Tyler, the above-named plaintiff, complains of James Monroe, the above-named defendant, and shows to this court that the said plaintiff, on or about the first day of February, 1865, sold and delivered to the said defendant twenty-five thousand dollars of United States 5.20 bonds, at that time worth ten per cent. above par or thereabouts; and the said defendant promised and agreed to pay him therefor three hundred shares of the capital stock of the Morris County Bank of Morristown, in the State of New Jersey, a banking institution at that time, and now suspended in its banking operations and owing large sums of money; and also on or before the first day of August, 1865, either to convey to the said plaintiff, free from all encumbrances except a certain mining lease, one undivided quarter interest in sixty-one acres or thereabouts of land at Rockaway, in the county of Morris and State of New Jersey, including the iron mine then worked by the Trenton Iron Company and known as the Hibernia Mine, subject to the lease thereof
145 then held by the said Trenton Iron Company, and one-quarter interest in the said lease; or else, at the option of the said plaintiff, to pay to the said plaintiff the sum of twenty-five thousand dollars, in cash, with interest thereon from the said first day of February, 1865, at and after the rate of six per centum per annum.

That the said defendant has delivered to the said plaintiff the said three hundred shares of stock, but that though often requested the said defendant has neglected and refused and still does neglect and refuse to pay the said plaintiff the said sum of twenty-five thousand dollars and interest, as aforesaid.

Wherefore the said plaintiff demands judgment against the said defendant in the sum of $25,000, together with interest thereon from the first day of February, 1865, to the first day of August, 1865, at and after the rate of six per centum per annum, and after that date at the rate of seven per centum per annum, and his costs of this action, and that the trial be had in the city and county of New York.

ROB'T B. CAMPBELL,
Pl'ff's Att'y.

CITY AND COUNTY OF NEW YORK, *ss:*

Daniel Tyler, the above-named plaintiff, being duly sworn, says that he has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

DAN'L TYLER.

Sworn to this 1st day of November, 1865, before me.

RICH'D STACKPOOL,
Notary Public.

Supreme court.

DANIEL TYLER } *ag't* JAMES MONROE. }

CITY AND COUNTY OF NEW YORK, *ss:*

Robert B. Campbell, being duly sworn, says that on the 24th day of October, 1865, he served the summons hereto annexed on James Monroe, to him known to be the defendant therein named, by delivering a copy thereof to said Monroe personally, in the city of New York, and leaving the same with him.

ROBT B. CAMPBELL.

Sworn to this 17th day of November, 1865, before me.

J. GRENVILLE KANE.
Notary Public, N. Y. City.

146 *Copy of the judgment.*

Supreme court.

DANIEL TYLER } *ag't* JAMES MONROE. }

The summons in this action having been duly served on James Monroe, the defendant, on the twenty-fourth day of October, 1865, and no copy of an answer or demurrer to the complaint having been served on the plaintiff's attorney, as required by the summons, now, on motion of Robert B. Campbell, plaintiff's attorney, it is hereby adjudged that Daniel Tyler, the plaintiff, recover of James Monroe, the defendant, the sum of twenty-six thousand and two hundred and eighty-nine dollars and fifty-nine cents, the amount claim*ent* and interest, with thirteen dollars and seventy-five cents costs and disbursements, amounting in the whole to twenty-six thousand three hundred and three dollars and thirty-four cents, and that the said plaintiff have execution therefor.

STATEMENT FOR JUDGMENT AND COSTS.

Amount claimed in summons		$25,000
Interest		1,289 59
		$26,289 59
Costs by statute	$10 00	
Clerk entering judgment	$1 00	
Affidavits	" 50	
Transcript and filing	" 51	
Postage	" 30	
Sheriff's fees	" 69	
Satisfaction piece	" 25	
Additional defendant	" "	
Stamp	" 50	
		13 75
		$26,303 34

CITY AND COUNTY OF NEW YORK, *ss:*

Robert B. Campbell, plaintiff's attorney in the above action, being duly sworn, says that the disbursements above mentioned have been made in this action, or will be necessarily made or incurred therein, as he verily believes; and he further says that no copy of an answer or demurrer to the complaint in this action has been received.

ROBT B. CAMPBELL.

Sworn to before me this 22nd day of November, 1865.

HORATIO CARR,
Notary Public, N. Y. City.

147 EXHIBIT No. 52.

Summons for a money demand on contract.

Supreme court.

DANIEL TYLER, PLAINTIFF,
against
JAMES MONROE, DEFENDANT.

[U. S. rev. stamp 50 cents, cancelled.]

To JAMES MONROE:

You are hereby summoned and required to answer the complaint which will be filed in the office of the clerk of the city and county of New York in this action, and to serve a copy of your answer to the said complaint on the subscriber at his office, No. 16 Wall street, in the city of New York, within twenty days after the service of this summons on you, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, the plaintiff in this action will take judgment against you for the sum of four thousand five hundred dollars, with interest from the seventeenth day of April, one thousand eight hundred and sixty-five, besides the costs and disbursements of this action.

Dated Oct. 24, 1865.

ROBT B. CAMPBELL,
Plaintiff's Attorney.

Supreme court.

DANIEL TYLER
ag't
JAEMS MONROE.

CITY AND COUNTY OF NEW YORK, *ss:*

Daniel Tyler, the above-named plaintiff, complains of James Monroe, the above-named defendant, and shows to this court:

That the said James Monroe made his certain promissory note, bearing date the seventeenth day of April, one thousand eight hundred and sixty-five, whereby he promised, at sixty days after the date thereof, to the order of the said plaintiff, the sum of forty-five hundred dollars, with interest from the date thereof, at the office of Charles Carow, No. 76 South street, in the city of New York, and delivered the same to the said plaintiff for a valuable consideration, and the said plaintiff is now the legal owner and holder thereof.

That the said note remains wholly unpaid. Wherefore the said plaintiff demands judgment against the said defendant in the sum of forty-five hundred dollars, with interest from the said seventeenth day of April, one thousand eight hundred and sixty-five, and his costs of this action, and that the trial be had in the city and county of New York.

ROB'T B. CAMPBELL,
Pl'ff's Att'y.

148 CITY AND COUNTY OF NEW YORK, *ss:*

Daniel Tyler, the above-named plaintiff, being duly sworn, says he has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

DAN'L TYLER.

Sworn to this 1st day of November, 1865, before me.

RICHARD STACKPOOL,
Notary Public.

Supreme Court.

DANIEL TYLER
ag't
JAMES MONROE.

CITY AND COUNTY OF NEW YORK, *ss:*

Robert B. Campbell, being duly sworn, says that on the 24th day of October, 1865, he served the summons hereto annexed on James Monroe, to him known to be the defendant therein named, by delivering a copy thereof to said Monroe personally, in the city of New York, and leaving the same with him.

ROBT. B. CAMPBELL.

Sworn to this 17th day of November, 1865, before me.

J. GRENVILLE KANE,
Notary Public, N. Y. City.

Copy of the judgment.

Supreme court.

DANIEL TYLER
against
JAMES MONROE.

The summons in this action having been duly served on James Monroe, the defendant, on the twenty-fourth day of October, 1865, and no copy of an answer or demurrer to the complaint having been served on the plaintiff's attorney, as required by the summons, now, on motion of Robt. B. Campbell, plaintiff's attorney, it is hereby adjudged that Daniel Tyler, the plaintiff, recover of James Monroe, the defendant, the sum of four thousand six hundred and eighty-eight dollars and thirteen cents, the amount claimed, and interest, with thirteen dollars and seventy-five cents costs and disbursements, amounting in the whole to four thousand seven hundred and one dollars and eighty-eight cents, and that the said plaintiff have execution therefor.

149 STATEMENT FOR JUDGMENT AND COSTS.

Amount claimed in summons		$4,500
Interest		188 13
		$4,688 13
Costs by statute	$10 00	
Clerk entering judgment	1 "	
Affidavits	" 50	
Transcript and filing	" 51	
Postage	" 30	
Sheriff's fees	" 69	
Satisfaction piece	" 25	
Additional defendant	" "	
Stamp	" 50	13 75
		$4,701 88

CITY AND COUNTY OF NEW YORK, *ss:*

Robert B. Campbell, plaintiff's attorney in the above action, being duly sworn, says that the disbursements above mentioned have been made in this action, or will be necessarily made or incurred therein, as he verily believes; and he further says that no copy of an answer or demurrer to the complaint in this action has been received.

ROBT. B. CAMPBELL.

Sworn to before me this 22d day of November, 1868.

HORATIO CARR,
Notary Public, N. Y. City.

EXHIBIT No. 53.

MORRISTOWN, *Sept.* 26, 1865.

R. CAMPBELL, Esq.:

DEAR SIR: I expected to meet you here to-day, or would have gone myself to New York.

Mr. Halsey has not returned yet, though he was expected the week I saw you in New York. I care little about seeing him, however, since receiving your letter yesterday and the copy of the order to pay the money to Allen.

It seems to me very plain that Allen is personally liable if we choose so to treat him. He promised to see me yesterday, but sent me a note saying he must go to N. Y., and would call to-day; as yet he has not called. I would like to hear his version of the matter of receiving the money from Halsey.

Yours, truly,

THEO. LITTLE.

I am ready to commence suit whenever it is thought best.

150 EXHIBIT No. 54.

MORRISTOWN, *Oct.* 3, '65.

R. B. CAMPBELL, Esq.:

DEAR SIR: I was very sorry to be compelled to disappoint you yesterday, though I had really nothing more to say than I had said to Gen. Tyler.

I was very unexpectedly, and I think very unnecessarily, detained in an engagement in Wall st. until 2½ o'clock, and then was compelled to go to 22d st.

Halsey has not returned, or if he has I have not yet heard of it. Allen saw me last week and feels he is in a tight place I think. He had forgotton one paper he had signed and which I reminded him of—his and Monroe's acceptance of Gen. T's offer. That is an important paper. A. admitted after his last interview with me he saw the matter differently from what he had previously done. He said it would doubtless be settled by Monroe. I said I was willing to give a reasonable time, but prompt action would be taken. I told him I had no doubt he could be arrested for the fraud. I asked him why he took the money from the master or solicitor, expecting he would say he received your written order to do so; but he did not. I then referred to it, and he s'd he had the money before that order was given. That, I said, was worse than ever; he was then without a shadow of excuse; it was wilful. My impression is he can be driven to fulfil the contract.

Yours, truly,

THEO. LITTLE.

EXHIBIT No. 55.

Yours of 3d came to hand yesterday.

16 WALL ST., N. Y., *Oct.* 6, 1865.

THEODORE LITTLE, Esq.:

DEAR SIR: Gen'l Tyler has returned to the city. He is very strongly of opinion that criminal proceedings should be taken against Allen as the only way of bringing about a prompt settlement; that you should give him definitely to understand that unless within a short time, say one or, at longest, two days, he placed in your hands satisfactory security that the debt would be paid within a short time, that he would be arrested.

Theodore Allen was in my office to-day. He says that Mr. Monroe has placed in his hands 1,000 shares (nominal par value $100 each) of the coal company stock to be used in the payment of this debt. He also said that his "friend" who went to look at the mine had promised to call and see him on Sunday, and that although he was
151 not very sanguine that he would let him have the money on it, yet that he thought he might. I will call on you on Tuesday, unless you advise me to the contrary.

Yours, truly,

ROBT B. CAMPBELL.

P. S.—I suppose that by Tuesday you will have made up your mind precisely how the proceedings should be brought, and that if the notice has not had the proper effect, that we will be able to go ahead. Allen and Monroe are working avowedly with interests hostile to each other; but as far as this claim is concerned they are in concert.

Y'rs,

R. B. C.

EXHIBIT No. 56.

MORRISTOWN, *Oct.* 21, '65.

ROBERT B. CAMPBELL, Esq.:

DEAR SIR: Theo. Allen came to see me and submitted the following proposition, which he says is his final one:

Original loan..... $47,300

Add int. from date of loan till Aug. 8th, then deduct payment of $20,000

This will leave, as he says, a balance of about $29,000, which he will reduce by payment of cash to $25,000, and for the latter amount will give his own notes, indorsed by his father, at 3, 6, 9, 12 months, with interest to be secured by pledge of 900 shares Mor. Co. Bank stock and 1,000 shares of the coal stock.

He stipulates also that Gen. Tyler shall return the 450 shares M. C. B. stock which he holds. I understood him to say he intended to include the note of $4,500, but his proposition does not include it. Now, my dear sir, if his proposition is so modified as to include the $4,500 note, and if on examination Theo. Allen's notes with his father's indorsements are good, my advice to the gen'l would be to make the settlement.

The bank and coal stocks ought together to be sufficient security, if Theo. Allen is, as I suppose he is, a man of responsibility.

Please consider the matter, advise with Gen. Tyler, and write me before next Wednesday, as I am to give him an answer by that time.

I regard it as unwise to prosecute for the whole claim and jeopardise it to secure the bonus, and think Gen. T. would come off well if he gets out of this with whole bones.

Theo. Allen is disturbed about the matter, but I am inclined to think will not do any better than he proposes, unless it may be to add the $4,500 note.

In one of the statements you gave me I see you include the $4,500 note, and yet make the balance due on 8th of Aug. only $30,320.29. If so there does not seem to be much between you.

Yours, truly,

THEO. LITTLE.

152 EXHIBIT No. 57.

16 WALL ST., N. Y., *Oct. 28d*, 1865.

THEODORE LITTLE, Esq.:

DEAR SIR: Your letter of 21st inst. was received this morning. Gen. Tyler came in and I showed it to him and he does not approve of the propositions. He wants the whole in cash, and even then I do not know whether he would be willing to surrender the stock. At his direction I sent you a telegram to-day asking when and where you would meet him to-morrow in this city.

You mention that in one of my statements there was due the gen'l Aug. 8 only the sum of $30,320.29. That was the amount due on the contracts and note after deducting what the stock cost him.

He paid Feb'y 14	$47,300
" ", Ap'l 17	4,500
	$51,800
Received Aug. 8	20,000
Balance of cost, without interest	$31,800

He was to receive for this 450 shares of stock and—

Aug. 1, with 6 per cent. interest	$25,000

" 8, without "	20,000
June 17, with 7 per cent. interest	4,500
	$49,500

So that the stock has cost him $2,300, besides the interest on the $20,000.

Yours, truly,

ROB'T B. CAMPBELL.

To THEODORE LITTLE, Esq.,
Morristown, N. J.

EXHIBIT No. 58.

16 WALL ST., N. Y., *Oct.* 31, 1865.

THEODORE LITTLE, Esq.:

DEAR SIR: Gen'l Tyler was in town to-day and wants to know how you are progressing. You were going to see Allen and give him to understand that unless he paid up or secured the whole amount with satisfactory security, and at short time, the general would proceed against the old man at once.

I have served the summons on Mr. Monroe, one on the $4,500 note and the other on the $25,000 contract. He appeared to object to our proceeding against himself more than I supposed he would, and I think that he has been working at Theodore Allen to get the matter
153 settled. The Allens still hope to reopen the bank, and appear to treat this indebtedness as a matter affecting Mr. Monroe only and his interests.

Let me hear from you whether there is anything new or not.

Yours resp'y,

ROB'T B. CAMPBELL.

THEODORE LITTLE, Esq.,
Morristown, N. J.

EXHIBIT No. 59.

NEW YORK, 11*th December*, 1865.

R. B. CAMPBELL, Esq.,
16 *Wall street, N. Y'k:*

MY DEAR SIR: I must confess the present position of the Monroe-Allen loan is more than a matter of annoyance to me, from the fact that I do not know my position in the suit, although it is brought in my name.

You will recollect that Mr. Little was retained by you, and when at a subsequent time I applied to him for information, his reply rather intimated that you was his principal and therefore he preferred to communicate with you on the subject-matter of the suit. So this matter stands now, and from Mr. Little's letter of date, which you sent to me for my information, I infer that the suit is tied up until May next, when it may come to trial; in the mean time something may be discovered that may render a suit against t he bank or some other action immediately necessary. Do you charge yourself with these matters, and in fact do you propose to manage the suit? The amount at stake is too important not to have this responsibility settled, and I would like to have your decision in the matter.

The loan was made on your application, and at the time it was increased to fifty thousand dollars; I believe I stated to you that you was the only person in New York who could have induced me to make so large a loan, and that I relied exclusively on you to see its conditions executed.

Very truly, your ob't serv't,

DAN'L TYLER.

EXHIBIT No. 60.

NEW YORK, 10*th April*, '66.

R. B. CAMPBELL, Esq.:

MY DEAR SIR: After leaving this morning, I met Moore and he told me Mr. Brown had a letter to shew me. I called there and he shew' me a letter in which Mr. Allen says he will not pay money twice; that he has paid $25,000 and will never pay it again. If you call, he will probably show you the letter, and then incidentally you can pitch in. I think the enlightning of Brown as to bank liability, and also as to the settlement as we talked it over. Use your judgment as to giving Brown terms or not. Perhaps a strong negative would do; I am not sure.

Y'rs. truly,

D. TYLER.

154 EXHIBIT No. 61.

RED BANK, 27*th Sept.*, 1866.

R. B. CAMPBELL, Esq., *New York:*

MY DEAR SIR: I have yours of 25th inst., and have already placed the Monroe papers in hands of Mr. Little. I had the contract for the $30,000 loan, and Monroe letters on various matters, and have sent them all to Little this a. m. I have a letter from Mr. Little saying that if he can get assistance he will try the case on Tuesday; if not, it must go over to January. I have written him this a. m. by all means try the case now, and not to postpone.

Mr. Brown can, I think, help us immensely in the case. Although asked by me to sound Allen, Allen requested him to see me and ascertain what kind of settlement he could get, and in fact made Mr. Brown his agent in the matter, and in the course of conversation confessed to Mr. Brown that he owed me the entire debt except the $4,500, but that he had paid you $20,000 cash and also $5,000 thro' Eli P. Norton. Will you see our friend Brown, and, if his testimony can be taken by deposition, notify Mr. Little at once to notify Allen of time and place of taking it. I think this testimony of Mr. Brown, as I understand it, very important to us, and I don't want to bother Mr. Brown to go to Morristown. Let me know by Mr. Carow to-morrow what you think of Mr. Brown's testimony.

Y'rs. tru'y,

DAN'L TYLER.

P. S.—On reflection it appears to me that Mr. Brown's deposition, and possibly Mr. Norton, if they have not subpœn'ed them, will answer our purpose equally well as to take them to Morristown to be kept possibly a day or two, which would annoy them. Will you look into this matter and act on it?

D. TYLER.

EXHIBIT No. 62.

MORRISTOWN, N. J., *Sept. 1st*, 1866.

DEAR SIR: Yours of yesterday is received. I rec'd the certificate of stock and had a new one issued to Gen'l Tyler, which I hold subject to his order.

The jury for the trial of our cause will be selected by the judge to-day and struck next Wednesday. The cause is noticed for trial on 1st Tuesday of October. Whether it can then be tried cannot now be determined. I presume it will be, and if tried may be among the first causes tried; it will depend somewhat on which judge hold our court. I will write you again.

Yours, truly,

THEO. LITTLE.

R. B. CAMPBELL, Esq.

155 EXHIBIT No. 63.

MORRISTOWN, *Feb. 13th*, 1867.

R. CAMPBELL, Esq.:

DEAR SIR: S. S. Halsey, esq., came to me to-day in reference to a settlement of the Allen suit, though assuring me he was not fully authorized to do so, all which of course I fully understand. He wanted me to make a proposition for settlement, which I did by saying I would receive the amount due, and had no other proposition to offer. After a good deal of backing and filling he suggested that it was not probable we could collect the amount from Allen at any rate. He would, he supposed, take the benefit of the insolvent law if we got judgment against him, &c., &c. I replied perhaps he would; I presumed he would do anything to prevent the gen'l from getting his money. He referred to the bank, and gave me some information which may yet be of service.

If his statements are true (and I do not doubt them) the debts of the bank are paid and there is a prospect of the stock being worth 30 cts. to the dollar when the assets are all collected, and, perhaps, even more. I said to him I considered this a debt due from the bank, which rather startled him at first, or seemed to, and he finally admitted it must be so if it was a debt at all. He then offered to pay in cash $10,000, assign 2,000 shares of the "coal stock," and let the gen. hold his bank stock absolutely and take his chance for it.

I suggested to him that as to the bank stock we hold it now, and, even more than that, if we had a claim against the bank it was a lien on the assets superior to the stock, and it would be rather unwise to convert our claim into stock and share with other stockholders. He made out to see it. His estimate of the coal stock was $20,000. I suggested that if the coal stock would sell for $20,000 he had better sell it, and then the way of settlement would be very plain. He closed our interview by earnestly requesting me to submit the proposition of settlement to you, which I promised to do, assuring him it was of no use. He is in earnest, I think, in wishing to effect a settlement, and have no doubt acts with Allen's approbation.

He talked of negotiating with you, and I said yes, I had no objections at all; all I wanted was to see the money collected. I therefore communicate his offer, and you can reply to it through me. Of course his proposition cannot be entertained for a moment.

Yours, truly,

THEO. LITTLE.

156 EXHIBIT No. 64.

MORRIS COUNTY BANK, *July* 13, 1865.

R. B. CAMPBELL, Esq.:

DEAR SIR: Yours of 12th was rec'd, and I think Mr. Pierson was correct in his opinion on issuing scrip, as what you left was only transfer without the power. I here hand you the scrip of Daniel Tyler, No. 103, for 450 shares, and did intend to come and see you this day, but did not get the money yet, but will come as soon as I have the money handed over.

Yours,

THOS. E. ALLEN.

157 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Wednesday, the sixth day of November, in the year of our Lord one thousand eight hundred and seventy-eight.

Present, the honorable Samuel Blatchford, circuit judge.

DANIEL TYLER *vs.* ROBERT B. CAMPBELL. } No. 1 on cal.

The above cause coming on for final hearing upon pleadings and proofs:

Mr. Cortlandt Parker is heard in behalf of complainant.

Mr. Francis N. Bangs is heard in behalf of the defendant.

Further argument adjourned to 7th inst.

158 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Thursday, the seventh day of November, in the year of our Lord one thousand eight hundred and seventy-eight.

Present, the honorable Samuel Blatchford, circuit judge.

DANIEL TYLER *vs.* ROBERT B. CAMPBELL. } No. 1 on cal.

The argument of the above cause being resumed:

Mr. Bangs continued argument in behalf of defendant.

Mr. John K. Porter is heard in behalf of defendant.

Mr. Cortlandt Parker closes in behalf of complainant.

Curia advisari vult.

159 Circuit court of the United States for the southern district of New York.

DANIEL TYLER *vs.* ROBERT B. CAMPBELL. }

BLATCHFORD, J.:

The prayer of the bill is that it may be decreed that the defendant "has been guilty of a breach of trust in the premises, and of negligence

in the management of the trust confided by your orator to his care in respect of the said moneys loaned to the said James Monroe, and the said mortgages assigned to secure the same." The other relief prayed for cannot be given unless the trust, and the fact that the defendant has been guilty of such alleged breach of trust or of negligence of the management of such trust, are established. It is important, therefore, to see what the trust was. Whatever trust there was is expressed by written instruments.

By the agreement of February 1st, 1865, between Monroe and the plaintiff, in regard to the $25,000 debt from Monroe to the plaint-
160 iff, Monroe agrees that he will, within 30 days from February 1st, assign to the plaintiff, "or to such person as he shall designate," two bonds and mortgages made by one Wood to the Morris County Bank, one to secure $100,000, and the other to secure $75,000, and also a certain lease "to be held as collateral security for the due performance of all the terms and conditions of this agreement." One of such terms was that such debt should be paid on or before August 1st, 1865, either in money or in another specified manner. At that time Monroe had no title to said bonds and mortgages or lease which he could assign. The Morris County Bank owned them. Thomas E. Allen was its president. The money constituting the $25,000 debt was borrowed by Monroe, for the benefit of the bank, on the 3rd of February. Allen protested to Monroe against using "the lease or mortgage" for a less amount than $50,000. Thereupon, on the 8th of February, an agreement was made between Monroe and the plaintiff which recites that Monroe is indebted to the plaintiff in $20,000, payable on the day of August next, for which the plaintiff holds
161 the joint and several note of Monroe and Allen, and whereby Monroe agrees that he will, within 30 days from February 8th, assign to the plaintiff "or to such person as he may designate for that purpose" the same two bonds and mortgages and the same lease before mentioned, "to be held as collateral security for the due and punctual payment of said indebtedness." The $20,000 note was dated February 8th, and was payable six months after date, and contained a promise by Monroe and Allen, jointly and severally, to pay to the order of the plaintiff $20,000, "at the office of Charles Carew, 76 South st.," and was signed by Monroe and by Allen. On the 11th of February the bank (Allen, as its president, executing the instrument) assigned to Monroe the said two bonds and mortgages and the said lease, with a condition that if the bank should pay to Monroe $50,000 on the 11th of June, 1865, with interest, interest payable monthly, the assignment should be void. On the same day Monroe assigned to the defendant the said two bonds and mortgages and the said lease, with a condition that if Monroe should pay to the defendant $50,000 on the 5th of August, 1865, with interest, the assignment should be void.

Monroe, by the assignment from the bank, acquired no absolute
162 title to the bonds and mortgages and the lease. The assignment of them to him was as security only. On the same 11th of February an instrument was executed between the plaintiff and the defendant and Monroe. That instrument recites that Monroe had assigned to the defendant the two bonds and mortgages and the lease; that the bank had assigned them to Monroe as collateral security for a loan to the bank of $50,000; that Monroe had, by the said two agreements of February 1st and February 8th, agreed to transfer to the plaintiff, or to such person as he might designate for that purpose, "the absolute title" to the said two mortgages and lease on or before the 10th day of

March then next, to be held by him as collateral security for the true and faithful performance of all the terms and conditions of the said two agreements; and that the plaintiff had designated the defendant "as the person to whom the absolute title of the said two mortgages and lease should be conveyed." It then states that it is mutually understood and agreed that, in case the absolute title to the said two mortgages and lease shall not be transferred to the defendant on or
163 before the 10th of March then next, the amounts of money due and payable by the said two agreements and by the said $20,000 note shall become and be immediately due and payable; and that, in case of any default in the payment of the said note, or in case of any default in the payment of the amounts of money to be paid under the terms of said agreement dated February 1st, or of any default in the performance of any of the conditions contained in either of the said two agreements, the plaintiff shall have the right and authority to direct and compel the defendant "to proceed with the foreclosure and sale of the premises covered by the said mortgages with the greatest speed and promptness allowable by law; or he may, if he sees fit, direct and compel "the defendant" to sell the said two mortgages and lease at auction, for cash, at such place in the city *of New York*, in the State of New Jersey, as he may elect, on 15 days notice to Monroe, and after advertising a notice of such sale 10 days in some newspaper published in said city of Newark. The absolute title to the mortgages was not transferred to the defendant by Monroe by the 10th of March, nor was it ever so transferred. Therefore the money due to the plaintiff became all of it payable on the 11th of March. From that time, as
164 between the parties to the tripartite agreement of the 11th of February, the plaintiff had the right to direct and compel the defendant to proceed with the foreclosure and sale of the premises covered by the mortgages or to direct and compel him to sell the mortgages at auction. The title to the mortgages, under the terms of the assignment from the bank to Monroe, did not become such a title as he could convey as an absolute title until the 11th of June. When these transactions took place the mortgages were in process of foreclosure, and that fact was known to Allen and to Monroe and to the plaintiff and to the defendant. The foreclosure suit had been commenced in October, 1862. The expression "proceed with the foreclosure" means under these facts continue for the benefit of the plaintiff the foreclosure suit which was in progress. The language of the tripartite agreement defines the nature of the trust duties imposed on the defendant. He was not required to do anything in regard to the mortgages until the plaintiff should elect whether he would have the foreclosure proceed or have the mort-
165 gages sold at auction, and should after such election give a direction to the defendant which of such two courses to pursue. The plaintiff never made such election, and never gave any direction to the defendant either to proceed with the foreclosure or to sell the mortgages at auction until after all the money received by Mr. Halsey from the master as the proceeds of the foreclosure sale had been paid out by Mr. Halsey to creditors of the bank, or to Allen for the bank. The bank was the plaintiff in the suit. The sale took place on June 20th. The plaintiff knew it was to be made and when. The defendant was present at the sale, and afterwards advised the plaintiff of the amount for which the property had been sold. The plaintiff was informed by Monroe's letter to him of July 14th that the money had been paid in to the master, and that it was probable he would pay it over before the plaint-

iff's claim would become due. It was paid over to Mr. Halsey, by the master, on July 10th, 17th, 18th, and 26th. Mr. Halsey paid it
166 all out by July 27th. Monroe's letter to the plaintiff of July 14th shows that the plaintiff was informed that the bank expected to receive the money from the master, and with it pay the plaintiff, and not that either the plaintiff or the defendant should receive it directly from the master. Up to the time the money was paid over by Mr. Halsey both the plaintiff and the defendant had confidence in the integrity of Allen, and nothing had occurred to cause them to question it. The defendant is not charged with bad faith. It is alleged that he did not record the assignments of the mortgages. As they were being foreclosed, the plaintiff's rights would have been in no way more effectually secured, as against anything which occured, if they had been recorded. It is also alleged that the defendant was guilty of a breach of trust in not notifying Mr. Halsey of the assignments. Mr. Halsey was the solicitor for the plaintiff in the foreclosure suit. That plaintiff was the bank. Allen, as president of the bank, knew of the assign-
167 ments. As regards notice to the bank, notice to Mr. Halsey was unnecessary. As regards notice to Mr. Halsey, he was the solicitor for the bank, and notice to him of the assigment would not have impressed on the moneys when received by him the character of trust-funds to be held by him as trustee for the defendant or the plaintiff. As regards notice to the master, such notice would have created no obligation on the part of the master to pay over the money to any one but the bank, or its solicitor, or to recognize the rights of an assignee pendente lite, in the absence of any order of the court to do so, and the plaintiff never directed the defendant to obtain such an order. Moreover, the bill alleges failure to give notice to Mr. Halsey as a specific breach of trust by the defendant, and the burden is on the plaintiff to prove it. He has failed to make it out satisfactorily. The defendant testifies that he informed Mr. Halsey twice before the sale that the mortgages had been hypothecated to him, and it is not reasonable to suppose that the defendant could have had the interviews with
168 Mr. Halsey to which Mr. Halsey testifies in regard to the proceeds of the sale unless Mr. Halsey was aware of the reason why the defendant was inquiring about such proceeds and as to where they were. On the whole case, and after a careful examination of it, the conclusion arrived at is that the bill must be dismissed with costs.

Cortlandt Parker, for the plaintiff.
Clifford A. Hand, for the defendant.

169 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States' court-rooms, in the city of New York, on Saturday, the thirty-first day of May, in the year of our Lord one thousand eight hundred and seventy-nine.

Present, the honorable Samuel Blatchford, circuit judge.

DANIEL TYLER
vs.
ROBERT B. CAMPBELL.

This cause came on to be heard at a stated term of this court and was argued by counsel. And thereupon, upon due consideration thereof, it was ordered, adjudged, and decreed that, upon the facts pleaded and proven, the complainant is not entitled to judgment, and that the bill

of complaint be, and the same hereby is, dismissed and that the defendant recover from the complainant his costs and charges of the action, amounting, as taxed, to the sum of two hundred three and $\frac{02}{100}$ dollars.

(S'g'd) SAM'L BLATCHFORD.

170 Circuit court of the United States for the southern district of New York. In equity.

DANIEL TYLER, COMPL'T,
ag'st
ROBERT B. CAMPBELL, DEF'T.

To the honorable Samuel Blatchford, judge of the circuit court of the United States for the southern district of New York:

The petition of Daniel Tyler, complainant, by his solicitors, Miller & Peckham, respectfully shows:

That heretofore said Daniel Tyler filed his bill of complaint herein for an accounting by said defendant to Robert R. Campbell and to recover from him certain moneys on an alleged breach of trust.

That thereafter the said cause came on for final hearing upon the pleadings and proofs, and this court, after deliberation, filed its opinion, wherein it found that the bill of complaint should be dismissed;

171 and that thereafter, and on the 31st day of May, 1879, a decree of this court was duly made and filed adjudging the complainant not entitled to judgment, dismissing the bill of complaint, and authorizing the recovery by defendant from complainant of the sum of two hundred and three $\frac{02}{100}$ dollars, costs and charges.

That complainant is aggrieved by said judgment and believes the same to be erroneous in dismissing said bill, and that the judgment should have been for the complainant.

Wherefore the said Daniel Tyler prays that he may be allowed to appeal from said judgment to the United States Supreme Court; that the record of this case, or an authenticated transcript thereof, including the said opinion of this court, may be sent to said Supreme Court, and that said Supreme Court may review said case and said judgment; and that said complainant may have such other and further relief as may be just.

172 Dated N. Y., Aug. 25, 1879.

(S'g'd) MILLER & PECKHAM,
Solicitors for Complainant.

(Endorsed:) Daniel Tyler vs. Robert B. Campbell. Petition for appeal to U. S. Supreme Court. Miller & Peckham, sol'rs for compl't. 29 Wall st., N. Y. The within petition granted and appeal prayed for allowed. Sept, 1879. Where are the citation & bond? Sept. 12, 1879. (S'g'd) S. B. U. S. circuit court. Filed Oct. 21, 1879. John I. Davenport, clerk.

173 Circuit court of the United States of America for the southern district of New York, in the second circuit.

DANIEL TYLER, COMPL'T, APP'L'T,
vs.
ROBERT B. CAMPBELL, DEF'T, RESP'T.

Know all men by these presents that we, Cortlandt Parker, of Newark, New Jersey, and James L. Hays, of the same place, are held and

firmly bound unto the above-named Robert B. Campbell in the sum of two hundred and fifty dollars, to be paid to the said Robert B. Campbell, for the payment of which well and truly to be made we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the twenty-seventh day of September, in the year of our Lord one thousand eight hundred and seventy-nine.

174 Whereas the above-named Daniel Tyler has prosecuted his appeal to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York, and filed in the office of the clerk of said court on the 31st day of May, 1879: Now, therefore, the condition of this obligation is such that if the above-named Daniel Tyler shall prosecute his appeal to effect and answer all costs if he fail to make his plea good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

CORTLANDT PARKER. [L. S.]
JAMES L. HAYS. [L. S.]

Signed and sealed in presence of—
EDW. Q. KEASBEY.

STATE OF NEW JERSEY,
County of Essex:

On this 27th day of September, 1879, before me personally came Cortlandt Parker, known to me to be the individual described in and who executed the foregoing bond, and acknowledged to me that he executed the same.

175 (U. S. COMM'R'S) (S'g'd) EDW. Q. KEASBEY,
(SEAL.) *U. S. Commissioner, Dist. of N. J.*

STATE OF NEW JERSEY,
County of Essex, ss:

On this 27th day of September, 1879, before me personally came James L. Hays, known to me to be the individual described in and who executed the foregoing bond, and acknowledged to me that he executed the same.

(U. S. COMM'R'S) (S'g'd) EDW. Q. KEASBEY,
(SEAL.) *U. S. Commissioner, Dist. of N. J.*

UNITED STATES OF AMERICA,
District of New Jersey, ss:

Cortlandt Parker, of Newark, above named, being duly sworn, deposes and says that he is a resident and freeholder of the State of New Jersey, and that he is worth the sum of one thousand dollars over and above all the debts and liabilities which he owes, or has

176 incurred, and exclusive of property exempt by law from levy and sale under an execution.

(S'g'd) CORTLANDT PARKER.

Sworn to before me this 27th day of September, 1879.
(S'g'd) EDW. Q. KEASBEY,
U. S. Commissioner, Dist. of N. J.

UNITED STATES OF AMERICA,
District of New Jersey, ss:

James L. Hays, of Newark, above named, being duly sworn, deposes and says that he is a resident and freeholder of the State of New Jersey, and that he is worth the sum of one thousand dollars over and above all the debts and liabilities which he owes or has incurred, and exclusive of property exempt by law from levy and sale under an execution.

(S'g'd) JAMES L. HAYS.

Sworn to before me Sept. 27th, 1879.

EDW. Q. KEASBEY,
U. S. Com., Dist. of N. J.

177 (Endorsed:)

U. S. circuit court, southern district of New York. Daniel Tyler vs. Robert B. Campbell. Bond. Miller & Peckham, sol'rs for compl't, 29 Wall st.

I approve of the within bond, Sept. 3rd, 1879.

(S'g'd) SAM'L BLATCHFORD.

U. S. circuit court. Filed Oct. 2, 1879. John I. Davenport, clerk.

178 By Hon. Samuel Blatchford, one of the judges of the circuit court of the United States for the southern district of New York.

To Robert B. Campbell:

Whereas Daniel Tyler has lately appealed to the Supreme Court of the United States from a decree or judgment entered in the circuit court of the United States for the southern district of New York on the 31st day of May, 1879, in a cause pending in said court, wherein Daniel Tyler was complainant and you, the said Robert B. Campbell, defendant, and has filed the security required by law:

Now, therefore, you are hereby cited to appear before the Supreme Court, at the city of Washington, on the second Monday of October, 1879, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the 30th day of September, one thousand eight hundred and seventy-nine.

179 (S'g'd) SAM'L BLATCHFORD.

(Endorsed:)

U. S. circuit court, south'n dist. of N. Y. Daniel Tyler vs. Robert B. Campbell. Citation. Miller & Peckham, sol'rs for compl't, 29 Wall st., N. Y.

Due service of the within citation, of a copy of the petition for appeal, & bond on appeal, & notice of filing the same, is hereby admitted, Oct. 3, 1879.

C. A. HAND,
Att'y for Def't.

U. S. circuit court. Filed Oct. 4, 1879. John I. Davenport, clerk.

180 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John I. Davenport, clerk of the circuit court of the United States

of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to 179, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Daniel Tyler, complainant, appellant, against Robert B. Campbell, defendant & respondent, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this tenth day of October, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States the one hundred and fourth.

[SEAL.] JOHN I. DAVENPORT, *Clerk.*

(Indorsement on cover:) No. 318. Daniel Tyler, appellant, vs. Robert B. Campbell. S. New York C. C. U. S. Filed 11th October, 1879.

FILED
APR 19 1882

BURGOYNE (Telephone No. 587), 29 Rose St.

SUPREME COURT OF THE UNITED STATES.

DANIEL TYLER,
Appellant,

AGAINST

ROBERT B. CAMPBELL,
Respondent.

Brief for Appellant.

Statement.

This is an appeal from a decree of the Circuit Court of the United States for the Southern District of New York, dismissing the bill on the merits. The bill was filed in the Court below, to compel the defendant to pay to the plaintiff the sum of about thirty thousand dollars, alleged to have been lost by the plaintiff by the failure of the defendant to perform his duties as trustee under certain mortgages held by him for the benefit of the complainant.

The complainant, an ex-officer of the regular army, was applied to by the defendant, a counsellor-at-law, in behalf of one James Monroe, to lend to Monroe for use in connection with the Morris County Bank, a sum of money, first specified to be $30,000 to be secured by an assignment to the defendant in trust for Gen. Tyler, the complainant, of a mortgage or mortgages for $100,000, or thereabouts, then in process of foreclosure. The complainant agreed, and the transaction was perfected. An assignment was made by the bank to Monroe, and another by Monroe to Campbell, vesting the mortgages in question in Campbell, as collateral security for $50,000. Complainant then gave defendant for Monroe, at

different times, securities realizing $51,800, which sum defendant paid to Monroe. The foreclosure went on. Defendant never recorded his assignment, and allowed the solicitor in the case to receive and pay over to the president of the bank all the money—the sum of $86,000—derived from the sale of the property. Of this sum but $20,000 was paid to the complainant. The president of the bank and the bank became insolvent, and the complainant lost the balance of the sum of $50,000.

This bill was filed to recover from defendant, as trustee, the balance which complainant alleges to have lost through the negligence of defendant.

The cause was heard below before Mr. Justice Blatchford, who rendered an opinion therein, which will be found on page 129 of the record. The bill will be found on page 1 of the record. By reference to the bill and answer (the answer being found on page 10 of the record), it appears that one James Monroe, being introduced to the defendant and expressing his desire to obtain some money, the defendant applied to the complainant to make a loan; that in consequence of such application, Monroe made a formal written application to the complainant for $30,000. That application is found on page 11 of the record. To that application the complainant made an answer, which is found on page 12 of the record.

Thereafter, an agreement was entered into between said James Monroe and the complainant, a copy of which appears on page 3 of the record, and a subsequent agreement between said Monroe and complainant and defendant, a copy of which appears on pages 4 and 5 of the record. By these agreements the complainant agreed to make certain advances upon the security of certain mortgages then existing and in process of foreclosure, provided that the said mortgages should be assigned to the complainant or such person as complainant might designate for that purpose, to be held as collateral security for the money so advanced.

Pursuant to such agreement the said two mortgages were assigned to the defendant. The fact of this assignment is alleged in the bill on page 4 of the record, and is admitted in the answer, and a copy of it is set out in schedule No. 5 annexed to the defendant's answer (record page 27). Such assignment was acknowledged so as to be capable of record, but was never recorded. The bill alleges that complainant gave defendant these sums of money in trust to invest for him in the manner prescribed, and that defendant accepted such trust. The answer denies the trusteeship, but does not deny the facts from which the trust is a necessary inference. It does not deny that the assignment of these mortgages was taken by and to the defendant for the benefit of and as security for the money loaned by the complainant thereon.

The claim of the defendant was not so much that he was *not* trustee as that he was trustee of a naked or passive trust, having nothing to do other than as directed or instructed by the complainant. There is no issue between the parties, but that subsequently the foreclosure suits were completed and the property sold for more than enough to repay these loans had the money been so applied, and that the solicitor for the complainant of record in the suits collected the money and paid it over to one Allen, who was the president of the bank, and that the money has thereby been lost to the complainant. The contention of the defendant has been that no duty rested upon him to see to the collection of that money himself, and to pay it over to the complainant.

The complainant also alleges and contends that the defendant gave no notice and took no steps to advise the attorney foreclosing the mortgages or the master having charge of the same of the fact of these assignments. The defendant, on the other hand, contends that he did give some notice of these assignments to the solicitor having charge of the foreclosure suits. There is some conflict in the testimony on that point.

Assignment of Errors.

FIRST. The Court below erred in dismissing the bill.

SECOND. The Court below erred in not holding that it was the duty of the defendant to collect the money on such foreclosure suits, and that, in permitting such money to be received by the solicitor of the nominal plaintiff, and by him paid out to others, defendant was guilty of a breach of trust.

THIRD. The Court below erred in holding that the failure of the defendant to record the assignment was not a breach of duty on the part of the defendant.

FOURTH. The Court below erred in holding that the defendant was not bound to give notice to the solicitor of the nominal plaintiff of such assignment, and that such failure was not a breach of trust.

FIFTH. The Court below erred in holding that the defendant was not bound, in the absence of a direction by complainant, to obtain an order requiring the master in the foreclosure suits to pay over the money received by him to the defendant, or to the complainant, to the amount that they were entitled to receive of the same.

Argument.

First. The defendant became assignee of these two mortgages for the benefit of, or in trust for, the complainant.

(*a*) It goes without saying that he was not such assignee for his own benefit, or in his own right. He necessarily, then, held for the benefit of the plaintiff, the person who advanced the money, and thereby became trustee for the plaintiff.

(*b*) Much was said in the Court below upon the subject of the defendant's acting as trustee or bailee

without compensation, because no compensation was agreed upon. The old rule in that respect has ceased to exist, and the execution of trusts is regarded like any other act for the benefit of another, as entitled to compensation.

See Wagstaff vs. Lowerre, 23 Barb., 209.

(*c*) The nature of the relation between the complainant and the respondent is clearly illustrated by the transaction of April 17, 1865, by which a portion of the advance was made. Monroe borrowed of complainant $4,500 and gave his note for it, and simultaneously he sent defendant the letter on page 85 of the record, in which he says: "I direct you to hold "any proceeds arising from the sale of the property "mortgaged by Theodore F. Wood and wife to the "Morris County Bank, which mortgages are now "held by you, and to pay thereout the amount of "said note in case the same should not be punctu-"ally paid by me at maturity."

That the defendant understood that it was his right and duty to collect the money and to pay it to the complainant, appears from Exhibit H, page 86, of the record, which is a letter written by him to Allen, President of the bank, and of date August 22d, 1865; he says:

"I understand that the proceeds of the Wood "mortgages that I hold are in a condition to be paid "over. I hereby authorize you to collect the "money as the President of the bank and pay over "the same to me, or enough to satisfy the claim "that I hold."

As matter of fact at the time this letter was written the moneys had been paid over to Allen, and Allen had wrongfully converted them. The defendant was unaware of that fact, he supposed they were not collected, but ready to be paid over, and his confidence in Allen was such that he was ready to authorize him, Allen, to take the moneys and to transfer to him, the defendant, the proportion thereof to which he was entitled. The letter is at

least conclusive evidence that the defendant understood that it was his right and duty to collect the moneys, the proceeds of the foreclosure, and to pay them to the plaintiff. His understanding of his position, and his position, are further clearly shown by Exhibit I, a letter from him to Allen of date August 30th, 1865, wherein he says :

" *Sometime since* you had authority to collect and " transmit to *me* the money proceeding from the " Wood mortgages, and I understood when I saw " you last that you would bring me in the money to " pay off Gen. Tyler's $25,000 contract to-day and I " so told the General. I was very much disap- " pointed not to receive your note saying you would " see me on Friday. I am sorry I was not in this " morning when you called, and I hope that you " will bring in the money with you on Friday with- " out fail. Mr. Monroe has made propositions to the " General for another loan, but he has not accepted " nor refused it, but he has said he would not " entertain them until the present loan was paid; " that mortgages had been assigned to him or " rather to me *for his benefit;* that the money had " been realized on them and that he wanted it paid " over and was very anxious that I should come to " Morristown personally and get it. *But I knew that you would prefer that it should be received from the master by yourself,* and therefore I sent you the request to collect it and send it to me; and I feel that every day that the General is kept out of his money is damaging the credit of the Bank and of Mr. Monroe with him and throwing obstacles in the way of any other transactions with him."

This last letter is dated but a week subsequent to the prior one; but its phraseology, "some time since you had authority," would clearly indicate that that authority was given at a time prior to the last preceding letter. It would thus seem clear that Mr. Campbell, the defendant, held these mortgages as trustee for the complainant, the lender of the money.

Second. It was the duty of the defendant, being trustee, as we have seen, to *collect* and to receive the money produced by the foreclosure of the mortgages.

(*a*) Herein arises the main issue between the parties to this suit.

The defendant contends that no duty was imposed upon him other than the holding of the naked title to the mortgages, unless at the request of, and as indemnified by the complainant. The complainant on the other hand, contends, that it was and became the active and affirmative duty of the defendant so soon as he accepted these assignments, to see to it that the money in the foreclosure suits was paid to him, the defendant; in other words, that it was his *duty to collect*. At the time when these assignments were made, the mortgages were in process of foreclosure. The bill for foreclosure was filed October 2, 1862; the master's report was made February 1, 1865, and the final decree was entered February 22, 1865. The assignment of the mortgages was made February 11, 1865. The complainant in the foreclosure suits was the Morris County Bank. The bank assigned the mortgages to Monroe; and Monroe assigned them to defendant on the 11th day of February, 1865. (See pages 25 and 27, being Schedules No. 4 and No. 5, annexed to the answer.)

"The first duty of trustees is to place the trust "fund in a state of security; thus if the trust fund "be an equitable interest, of which the legal inter- "est cannot be at present transferred to them, it is "their duty to lose no time in giving notice of their "own interests to the person in whom the legal es- "tate is vested; for otherwise the party who cre- "ated the trust might encumber the interest he has "settled in favor of a purchaser without notice."

Lewin on Trusts, p. 326.
Jacob vs. Lucas, 1 Beavan, 436.

"If the trust fund be a chose in action which may be reduced into possession, it is the trustee's duty to

be active in getting it in, and any unnecessary delay in this respect will be at their personal risk."

Lewin, 326.
Caffrey vs. Daly, 6 Vesey, 488.
Pletell vs. Craddock, C. P. Cooper's Case, 1837, 8, p 481.
McGachen vs. Den 15, Beavan, 84.
Wilds vs. Gresham, 2 Drewry, 258.
Cooper vs. Day, 1 Rich, Ch. 26.

"The first duty of a trustee after his appoint-
"ment and qualification to act is to secure the posses-
"sion of the trust property, and to protect it from
"loss or injury. If the trust property be an equitable
"interest or estate he must give notice to the holder
"of the legal title, and if he cannot have the legal
"title transferred to himself he must take such steps
"that no encumbrance can be put upon it by the
"settler or assignor. If the trust fund consist, in
"part, of notes, bonds, polices of insurance and other
"such choses in action, notice should be given to the
"promisors, obligors or makers of the instrument."

Perry on Trusts, p. 438.
See also Perry on Trusts, page 707.

Applying these general principles, what was the duty of the defendant in the premises?

We contend that his duty was first, absolutely and imperatively to collect this money; not to take this or that step, and therewith be content, but that his duty was the ultimate and final one of collection, and that whatever steps were necessary to that end, he was bound to take.

See Bostock vs. Flager, L. R., 1 Eq., 26.
Hatgood vs. Parkin, L. R., 11 Eq.
Sutton vs. Wilders, L. R., 12 Eq., 373.

The case is analogous to the duty of the holder of a collateral security. As between him and the principal debtor the holder is bound to collect the collateral security, and nothing short of showing that he has exhausted all the usual and ordinary

means to effect that purpose will excuse him from being charged with the face value of the security.

14 Am. Law Review, p 704, & cases cited.

As a means to this end of collection the defendant was bound:

1st. To see that the two assignments, the one from the bank to Monroe and the other from Monroe to him, were recorded. The laws of New Jersey (Nixon's Digest, p. 611) provide that "The clerks of "the several counties of this State be and they are "hereby authorized to record, in suitable books to be "provided for that purpose, any assignment of any "mortgage within their respective counties, the "same bearing thereon such certificate of the "acknowledgement or of the proof of execution "thereof as is or may be required for recording of "deeds. * * * Such recording shall be notice, "from the time such assignment is left for that "purpose, to all persons concerned that such mort-"gage is so assigned, and the assignee of any "mortgage by an assignment or assignments not "recorded shall be bound by the proceedings, and sale "in any foreclosure suit against any previous "holder. * * * When any assignment hereafter "made [Act passed March 3, 1853,] is not recorded as "in this act provided, any payments made to the "assignor in good faith and without actual notice "of such assignment, and any release of said mort-"gaged premises or any part thereof to a person not "having actual notice thereof, shall be as valid as if "such mortgage had not been assigned."

2d. To see that notice, clear and unmistakable, was given to the debtor, Theodore F. Wood; to the solicitor in charge of the foreclosure suit, and to the Master in Chancery, who had charge of the sale. That these steps are not only proper, but necessary, is apparent on the most cursory examination. No one, in such case, acting in his own behalf, would fail to perceive the imperative necessity of advising the attorney for the plaintiff in the foreclosure suit, and the master making the sale, to the end that the

moneys to which he had the right should be paid to him and not elsewhere. No one, acting in his own right, in case he had omitted such precautions, would fail to ascribe the resulting loss to his own negligence.

See the observations of Lord Cottenham in Cluff vs. Bond, 3 Mylne and Craig, 490-496; and 2 Story's Equity, 498 note.
Brice vs. Stokes, 11 Vesey, 318.
Morrill vs. Morrill, 5 Johnson's Ch., 283-295.
Walker vs. Simons, 3 Swanst, 78, note 8.

Third. The case shows beyond question that defendant has been guilty of neglect of duty occasioning loss to the complainant. If we are right in our claim that it was his duty to collect, it is conceded that he has not collected. It is not only clear that he has not collected, but it is clear that he has affirmatively authorized the President of the Bank, which was the nominal plaintiff, to receive this money from the master or the nominal plaintiff's solicitor, and to hand it over to him, the defendant. This would seem the very thing of all others which the defendant was bound not to do.

Defendant left the complainant in the same position as if the assignment had not been executed, and compelled the complainant to repose in Allen the trust which he had industriously confided to defendant Campbell alone.

True, the defendant says that he told the solicitor, Halsey, that the mortgage was hypothecated to himself. Halsey directly denies this. (Record, p. 51). He says he would not have paid it over had he known it. (Record, p. 51). But whether the defendant or Halsey is right on that point is of little moment. There is no pretence that Campbell gave notice to Halsey in the only way in which it could be given, and the only way in which he ought to have given it; that is, demanding and claiming that, to the extent of his interest, Halsey should act

for and in his behalf; and that, if he declined so to do, he should be promptly removed from his position as solicitor for complainant.

Even in the aspect that he did give such notice to Halsey, he but thereby made Halsey his own agent, and if Halsey, notwithstanding such notice, afterwards paid over the money in disregard of it, Campbell was equally liable as if he had never given the notice. See Bostock vs. Flager, and other cases before cited. The other conceded acts of the defendant would support the testimony of Mr. Halsey rather than his own. His letters, before cited, to Mr. Allen, are wholly inconsistent with the idea that he could have notified Halsey in the only way in which a notice would have any value—*i. e.*, a notice in the nature of a demand that the money, when collected by Halsey, should be paid to him. It is hard to suppose that the man who wrote to Mr. Allen that he knew that Allen would prefer that the money should be received from the master by himself (Allen), and, therefore, sent Allen the request to collect it, could have notified the solicitor in the cause that he was the owner and entitled to receive it, and claimed that it should be paid to him alone.

Fourth. The resulting loss to the complainant is not in dispute. If we are right in our claim that it was the duty of the defendant to collect this money, and that in not so doing he has committed a breach of trust, it necessarily follows that he has a right to recover from Mr. Campbell the resultant loss, *i e*, the amount loaned, fifty-one thousand eight hundred dollars, less the amount paid twenty thousand dollars, which equals thirty-one thousand eight hundred dollars, and interest thereon.

Fifth. The decree of the Court below should be reversed, and a decree should be rendered for the complainant for the amount so lost with costs.

WHEELER H. PECKHAM,
Of Counsel for Complainant, Appellant.

16-322

WM. S. SHARP, Printer, 21 W. State St., Trenton, N. J.

SUPREME COURT OF THE UNITED STATES.

DANIEL TYLER,
Complainant, Appellant,
vs.
ROBERT B. CAMPBELL,
Defendant, Appellee.

On Appeal from the Decree of the Circuit Court of the Southern District of New York. In Equity.

Wm. S. Sharp, Printer, 21 W. State St., Trenton, N. J.

Supreme Court of the United States.

DANIEL TYLER,
Complainant, Appellant,
vs.
ROBERT B. CAMPBELL,
Defendant, Appellee.

On Appeal from the Decree of the Circuit Court of the Southern District of New York. In Equity.

Brief for Appellant.

I.

STATEMENT OF THE CASE.

Robert B. Campbell, the defendant, an attorney and counsellor-at-law, of New York city, in January, 1865, applied to Daniel Tyler, the plaintiff, once a general in the United States army, acting on behalf of one James Monroe, for a loan of $30,000. Monroe proposed to borrow this money for use in connection with the Morris County Bank, in which he professed to have an interest, on the security of the assignment of mortgages of a mine called the Hibernia mine, and of a lease thereof, the mortgages being given to secure $175,000. One Thomas E. Allen, then president of the bank, was associated in the negotiation which resulted in the advance by General Tyler, through Mr. Campbell to Mr. Monroe, of securities which, on sale, produced nearly or quite $50,000, and the assignment first by the bank to Monroe, and then by Monroe to Mr. Campbell, in trust for General Tyler, of the aforesaid mortgage and lease, as collateral security, to secure the payment of this sum, represented by one claim of $25,000, another of $20,000, and a subsequent one for $4500, these notes each drawing interest at six per cent.

The mortgages were at the time in process of foreclosure in Chancery of New Jersey, at the suit of the Morris County Bank. By the assignment to Campbell, he was formally constituted attorney irrevocable in the name of Campbell or of the Bank, or otherwise, to use all lawful means for the re-

covery of the sums of money secured by the mortgage, and interest; and on the execution of the note for $4500, the last advance, a letter was written to Campbell by Monroe, directing him "to hold any proceeds arising from the sale of the property mortgaged to the Morris County Bank, which mortgages are now held by you, and to pay thereout the amount of said note, in case the same should not be punctually paid by me at maturity."

General Tyler made this trusteeship of Mr. Campbell for him a condition of his loaning the money, having confidence in his integrity and business capacity.

Mr. Campbell had full knowledge of the foreclosure.

The assignment bore date February 11th, 1865. A decree for sale was made March 1st, 1865. The $4500 note was made April 17th, 1865, while the sale was under advertisement. On the 20th of June, 1865, the sale took place, and realized $86,400. Mr. Campbell was present and knew of it. He neglected to notify the master in chancery who sold the property, or the solicitor who directed the sale, and was to receive the money from the master, that he was assignee of the mortgages. He neglected to apply to the Court of Chancery to protect his and General Tyler's rights. He did not even lodge his assignment in the registry office of the county where the mortgaged property was, for record. The master and the solicitor were entirely ignorant of his possessing any right to the money. The solicitor therefore paid over the same to Thomas E. Allen, the president of the bank, and joint debtor with Monroe to Tyler, who received it in fraud of General Tyler. Only $20,000 was then recovered. Allen was sued for the rest, but proved insolvent. And this bill is filed against Campbell as trustee to recover the unpaid balance.

Tyler, who knew of the sale, and that the money was soon to be paid, had interviews with Campbell, after the sale, in which he urged him to get the money, and expressed his apprehensions and anxiety; but Campbell, for whatever reason, preferred to trust Allen, and even authorized him to receive it.

II.

The Circuit Court decreed that upon the facts pleaded and proven, the complainant was not entitled to relief, and that the bill of complaint should be dismissed.

From this decree appeal is taken.

III.

We proceed to discuss the law and facts of the case.

1. The defendant became trustee for General Tyler of two mortgages given by Theodore T. Wood to the Morris County Bank, assigned by the bank after beginning a suit for foreclosure upon it, to James Monroe, and by Monroe assigned to the defendant, at the request and for the use of the plaintiff.

The assignment by Monroe to Campbell is schedule No. 5, (Record 27.) The assignment by the bank to Monroe is schedule No. 4, (Record 25.) These assignments are each dated February 11th, 1865. They are conditioned to pay $50,000, with interest. The assignment to Monroe makes it payable June 11th, 1865; that by Monroe August 5th, 1865.

On the same day, February 11th, 1865, Monroe, Tyler and Campbell

executed an agreement under seal, (Record 83, 84, 85.) In this agreement it is stated that Campbell was designated by Tyler as the person to whom the titles of the mortgages should be conveyed.

The transaction grew out of a proposition in writing, by Monroe to Tyler, for a loan of $30,000, (Record 11,) as collateral security for which one of these mortgages, and a lease of the mine mortgaged, was to be placed in the hands of Mr. Campbell.

According to the answer, (Record 13,) Monroe, who wanted the money for the use of the Morris County Bank, conferred with Thomas E. Allen, its president, about this loan. Allen protested against taking the securities for less than $50,000. Monroe then asked for $20,000 more than he had applied for. This was agreed to; and so the assignment to Campbell was made.

General Tyler advanced the moneys borrowed. Mr. Campbell acted as his attorney in doing so. See his answer, (Record 15.)

Mr. Campbell, November 20th, 1865, made an affidavit, (Record 91,) stating the case in exact conformity with the statement of the plaintiff. In this he says that Monroe assigned the mortgages to him, Campbell, "to be held for the security and benefit of the said Tyler, to the extent of his indebtedness to him."

This affidavit was annexed to one made by General Tyler. It begins with alleging that he had read it and knew "the contents thereof, and that the matters therein set forth in relation to this deponent, and his actions in the matters referred to, are true."

Part of General Tyler's affidavit, (Record 89,) reads thus: "And this deponent further saith that said Robert B. Campbell had no interest, personally, in the bonds and mortgages so assigned to him, but held them *merely in trust* for this deponent, and to secure to this deponent the repayment of said loan, or the fulfillment of said agreement by said James Monroe."

The answer in this cause nevertheless denies the trusteeship, (Record 13, 16–23.)

But this is a legal inference, not a mere fact. That the mortgages were assigned to Mr. Campbell, not for his own use but for that of General Tyler, that Campbell received the United States bonds which were its consideration for the assignee, and gave them to him, is undeniable, (Record 15,) as also that he consented to the use of his name, and received and kept the assignment, giving the other papers to General Tyler, (Record 15.)

It is idle to deny the trusteeship.

The character of the trust was defined by the assignment. It conferred authority, irrevocable, upon Mr. Campbell to collect the money secured by the mortgages.

From such authority arises the duty. The reception of the assignment, and the exclusive right given by it to the defendant, with none in the plaintiff whatever—the whole right as to the mortgages and the money due being vested in defendant—and the custody by him of the instruments, giving him the title and authority, especially as he was by employment an attorney and counsellor-at-law, and had to do with the loan, imposed upon him every duty connected with such a trust.

There can be no plea of ignorance, no defence that there was lack of information as to facts.

The character of the principal transaction is clearly exhibited by that of

April 17th, 1850. The assignment, it will be noticed, was to secure $50,000; but there was, at its date, only two sums, $25,000 and $20,000, (or bonds with those amounts,) advanced. April 17th, 1865, General Tyler loaned the remainder, or the greater part of it. He gave Mr. Campbell $4500 for Mr. Monroe, on the security of this mine mortgage, (record, 30, § 11.) A note for that amount, with interest, was taken by Mr. Campbell, and left in his hands for collection, (*Exhibit C,*) and with this there went to Mr. Campbell a letter from Monroe of that date, (*Exhibit D,* record 85,) as follows:

"NEW YORK, April 17th, 1865.

Robert B. Campbell, Esq.:

"*Sir*—I have this day given to General Daniel Tyler a promissory note for the sum of four thousand five hundred dollars, payable at sixty days from this date, with interest from date, and hand you herewith a certificate for one hundred shares of the Morris County Bank as collateral thereto, and *I further direct you to hold any proceeds arising from the sale of the property mortgaged by Theodore T. Wood and wife to the Morris County Bank, which mortgages are now held by you, and to pay thereout the amount of said note in case the same should not be punctually paid by me at maturity.*

"JAMES MONROE."

And see defendant's answer (record 18.)

Mr. Campbell's acceptance of the $4500 for Monroe shows the nature of his position.

The proceeds of the sale under the mortgages were to be his—necessarily they had to be—and his taking the note into his custody with this instruction, shows plainly that he was to pay this claim out of these proceeds.

If so, how can it be pretended that he had no duty as to the other sums previously loaned, through his hands, and to secure which the mortgages were assigned him?

The defence set up by him, and which has been affirmed by the learned judge below, is sweeping He says (record 18): "And this defendant denies that any duty or responsibility devolved upon or was assumed by this defendant on receiving the assignment or assignments of the said mortgages, or either of them, to place the same on record *or to take any active part in relation thereto.*"

He did not always think so. August 22d, 1865, he wrote Thos. E. Allen, the president of the bank, as follows (record 86):

"*Dear sir*—I understand that the proceeds of the Wood mortgages *that I hold* are in a condition to pay over. I *hereby authorize* you to collect the money, as the *president of the bank,* and pay over the sum to me or enough to satisfy the claims that I hold."

This latter is telling evidence, both as to the fact of trusteeship and the reason of the disaster.

Mr. C. then thought the moneys still under his control. General Tyler says in his evidence, (record 40, § 13,) "A few days after that (the sale of the mine) I saw Mr. Campbell again and asked him if he had got the money. He said that he had not, and that he could not until thirty days after the sale, as the master had a right to retain the money thirty

days after payment; that he had seen Allen and Monroe, and thought everything right."

This idea was without foundation. Mr. C. was deceived by some one. Probably he was further deceived, and thought when he wrote this letter, as he says, that the moneys were only in a condition to be paid over. Allen had not told him that they had been, and he asked no one but Allen or Monroe. He adopted what was doubtless their suggestion, that Allen, *as president of the bank*, should collect them and pay over to him enough to satisfy the claims he held—not that *he* should take all, and pay the bank what did not in equity belong to him. He had confidence in Allen and gave him *authority*. He knew such authority was necessary. Why? because he was trustee of the mortgages.

That this was his plan is evident from the next letter. (*Exhibit I*, record 86.)

"16 WALL STREET, NEW YORK, August 30th, 1865.

Thomas E. Allen, Esq.:

"*Dear sir*—Some time since you had authority to collect and transmit to me the money proceeding from the Wood mortgages, and I understood when I saw you last that you would bring me in the money to pay off General Tyler's $25,000 contract to-day, and I so told the general. I was very much disappointed not to receive your note saying that you would see me on Friday. I am sorry I was not in this morning when you called, and I hope you will bring in the money with you on Friday without fail.

Mr. Monroe has made propositions to the general for another loan, but he has neither accepted or refused them; but he has said he would not entertain them until the present loan was paid; that mortgages had been assigned to him, *or rather to me for his benefit;* that the money had been realized on them, and that he wanted it paid over, and was anxious that I should go to Morristown personally and get it. But I knew that you would prefer that it should be received from the master by yourself, and therefore I sent you the request to collect it and send it to me, and I feel every day that the general is kept out of his money is damaging the credit of the bank and of Mr. Monroe with him, and throwing obstacles in the way of other transactions with him. Yours truly,

"ROBT. B. CAMPBELL.

"P. S.—Do not fail to bring in the money."

The initial sentence "*Some time since* you had authority," &c., does not refer to the letter of August 23d. The whole context shows that it looked further back.

But the letter is the letter of a trustee; one conscious of and exhibiting a sense of his duty; one who had given authority to collect and transmit the mortgage money; who had relied on Allen as his agent. He declares in it that the mortgages had been assigned to him for General Tyler's "benefit." He admits anxiety on the part of his *cestui que trust*, and a request that he should go personally and get it. And he gives the reason for the loss, viz.: "I knew that you would prefer that the money should be received from the master by yourself."

When was it that General Tyler had been anxious that he should go to Morristown personally and get the money, and that he sent to Mr. Allen the request to collect it?

His diary assists him (record 34.)

On June 30th, ten days after the sale, he calls on Mr. Campbell in refer-

ence to the $4500 note, and expressed his anxiety as to the loan, and his want of faith in the parties. Campbell thought it would be all right. July 10th he saw Campbell again, and again expressed anxiety as to the loan, the $4500 not being paid. (It had fallen due June 19th, the day before the sale.) Mr. Campbell expressed his confidence still. July 14th Tyler saw his trustee again. He still expressed his anxiety, and Campbell his confidence. July 24th he saw Campbell again, and the next day, the 25th, going from Red Bank to New York for the purpose, the result of these visits being the same.

It was between July 8th and July 27th that the money went from the solicitor's hands (record 51.)

Doubtless, it was this period to which Mr. Campbell refers when he writes that General Tyler was anxious that he should go personally to Morristown and get it (record 87.) "But," he says, "I knew that you (Allen) would prefer that it should be received by yourself."

This evidence will, however, be referred to, perhaps more properly, on the question of Mr. Campbell's breach of trust.

But it is pertinent as showing that there was a trust, to his own consciousness, under which he was assignee of these mortgages.

And beside this special trusteeship, Mr. Campbell was General Tyler's counsel. To deny it, under the testimony, and with his conduct fairly considered, is sheer folly.

True, Monroe employed him also. There is no inconsistency here. True, Mr. Campbell had received no remuneration from General Tyler; but as soon as the debts were refused payment, Campbell regains his situation and retainer, and devotes himself to the case. He it is who selects and consults Little. He brings suit himself in New York against Monroe. During all the period between the loan and the loss of this money, Mr. Campbell was constantly resorted to, professionally, by General Tyler, whose aim in the beginning was to secure himself the more by having him as lawyer as well as trustee.

III.

The trusteeship of the defendant for the benefit of General Tyler, being manifest, what duties thence arose?

These assignments created no mere naked trust.

They were assignments not only of the mortgages but of "the bonds or obligations therein described, and the money due and to grow due thereon, with the interest."

There could be no enjoyment of this trust property by the *cestui que trust*, except through the trustee.

Had the money or its interest been paid, the trustee would have had to receive and to pay over; he could not hold it.

Thus, evidently, some duties grew from the trust.

And his irrevocable and exclusive right to take all lawful means for the recovery of the money, as already stated, involved the duty of doing so.

The mortgages were in course of foreclosure when the assignment was made.

The bill for foreclosure was filed October 2d, 1862, (record 50.) The master's report was dated February 1st, 1865; decree for sale February 22d, 1865. Execution was issued March 24th, 1865.

On the same day with the master's report the agreement for the first loan was made. The assignment bears date February 11th, 1865.

The situation involved specific duties. No one could deny these duties; certainly no lawyer should.

The first duty of the trustee was the reduction of the property into possession; then its safe custody; then the proper care of the trust fund; then its collection, and lastly its payment over. *Lewin on Trusts* 326.

"The first duty of trustees is to place the trust fund in a state of security. Thus, if the trust fund be an equitable interest, of which the legal interest cannot at present be transferred to them, it is their duty to lose no time in giving notice of their own interests to the persons in whom the legal estate is vested; for otherwise, the party who created the trust might encumber the interest he has settled in favor of a purchaser without notice." *Lewin* 326; *Jacob* v. *Lucas*, 1 *Beav.* 436.

If a trust fund be a chose in action, which may be reduced into possession, it is the trustees' duty to be active in getting it in; and any unnecessary delay in this respect will be at their personal risk.

Lewin 326.
Coffrey v. *Daily*, 6 *Vesey* 488.
Pletel v. *Craddock, C. P. Cooper's case*, 1837–8, *p.* 481.
McGachen v. *Den*, 15 *Beav.* 84.
Wiles v. *Gresham*, 2 *Drewry* 258.
Cooper v. *Day*, 1 *Rich. Ch.* 26.

"The first duty of a trustee, after his appointment and qualification to act, is to secure the possession of the trust property and to protect it from loss or injury. If the trust property be an equitable interest or estate, he must give notice to the holder of the legal title; and if he cannot have the legal title transferred to himself, *he must take such steps that no encumbrances can be put upon it by the settlor or assignor.* If the trust fund consist in part of notes, bonds, policies of insurance, and other such choses in action, notice should be given to the promisors, obligors or makers of the instrument." *Perry on Trusts*, 438.

The principle declared in the text books is of familiar application. Any negligence occasioning loss, makes the trustee liable.

The simpler and easier the act required, the clearer the duty, and the liability for its neglect.

Where a trustee, after accepting the trust, neglected to record the trust deed, he was charged with a loss resulting therefrom. *Cooper* v. *Day*, 1 *Rich. Ch.* 26.

The case in hand is analogous to the becoming trustee for bondholders holding a mortgage by corporations. As to the duties of such trustees, see *Perry on Trusts*, 707.

They must take care that the property is not wasted, or depreciated, or rendered worthless as security.

Applying general principles, we insist—

1. Mr. Campbell ought immediately to have caused his assignment to be recorded.

It was acknowledged and ready for record. (R. 4, l. 30.) So was that given to James Monroe by the Morris County Bank. (R. 4, l. 20.)

Both these assignments should have been immediately registered. *Nix. Dig. N. J. Laws* 611.

"The clerks of the several counties of this state be and they are hereby

authorized to record, in suitable books to be provided for that purpose, any assignment of any mortgage within their respective counties, the same bearing thereon such certificate of the acknowledgment, or of the proof of execution thereof, as is or may be required for recording of deeds * * * and such recording shall be notice from the time such assignment is left for that purpose to all persons concerned, that said mortgage is so assigned; and the assignee of any mortgage by an assignment or assignments not recorded, shall be bound by the proceedings and sale in any foreclosure suit against any previous holder. * * *

"When any assignment hereafter made (act passed March 3d, 1853,) is not recorded as in this act provided, any payments made to the assignor in good faith and without actual notice of such assignment, and any release of said mortgaged premises, or any part thereof, to a person not having actual notice of such assignment, shall be as valid as if said mortgage had not been assigned."

2. Actual notice should have been given, unmistakable, to the debtor, Theodore T. Wood—to the solicitor in charge of the foreclosure suit—to the master in chancery as soon as knowledge of his holding the writ or money was obtained.

It cannot need citation or argument to prove that a trustee of the security for a debt actually then in suit, ought to notify the attorney who is prosecuting it.

That when he attends the sale he should give such notice to the master.

That when he knows the money is to be paid, he should make known his claim.

That failure, during all the proceedings, to mention his rights, is negligence so plain and inexcusable, that loss by means of it must occasion liability.

I cite the observations of Lord Cottenham in *Clough* v. *Bond*, 3 *Mylne & Craig* 490–496; and the note to 2 *Story's Eq. Jur.* 498. All the cases, too, in which trustees are made responsible for the frauds or loss occasioned by their co-trustees through their negligent omission of their opportunity, bear upon the case in hand.

See *Brier* v. *Stokes*, 11 *Ves.* 319.
Morrell v. *Morrell*, 5 *Johns. Ch.* 283–295.
Walker v. *Simonds*, 3 *Swanst.* 78, *note a.*

Even should the doctrine now frowned upon (see Lewin and Perry, as cited,) be sustained, that the trustee is not compelled to do better with another's, than with his own, the neglects here relied upon would make him liable.

For what purchaser of a mortgage will not record his assignment—or, if he buy during foreclosure, notify the solicitor—or in case of a sale, the sheriff or master—or after the sale, the solicitor who is to receive and pay over the money?

If, neglecting to interfere at any time, he finds the person who only is known to possess the mortgage, collect the money, and refuse to pay it over, does he fail to blame his carelessness and unauthorized confidence?

It is most respectfully suggested that the opinion of the learned judge who heard this cause, is in direct conflict with the authorities cited and the principles contended for.

He says (record 132): "It is alleged that the defendant was guilty of a breach of trust in not notifying Mr. Halsey of the assignments. Mr. Halsey was the solicitor for the plaintiff in the foreclosure suit. That plaintiff was the bank. Allen, as president of the bank, knew of the assignments. As regards notice to the bank, notice to Mr. Halsey was unnecessary. As regards notice to Mr. Halsey, he was the solicitor for the bank, and notice to him of the assignment would not have impressed on the moneys when received by him, the character of trust funds to be held by him as trustee for the defendant or the plaintiff. As regards notice to the master, such notice would have created no obligation on the part of the master to pay over the money to any one but the bank or its solicitor, or to recognize the rights of an assignee *pendente lite*, in the absence of any order of the court to do so, and the plaintiff never directed the defendant to obtain such an order."

It is not suggested that notice to the bank *was* necessary—that institution having, by its president, assigned the bonds and mortgages to Monroe, and being prior to the assignment thereof by Monroe to Campbell. But notice to the solicitor, who was to receive the money—who was collecting it as attorney for its owner—we respectfully submit, would have made it his duty to refuse to pay it to the bank or to the creditors of the bank, and if his original employer demanded it, to apply to the court for instruction as to his duty, or to direct the master to pay it into court, that judicial disposition of it might take place.

The express language of these assignments empowering Mr. Campbell as Monroe's attorney and the attorney of the bank, irrevocable, in his or its name, or otherwise, to have, use and take all lawful means for the recovery of said money and interest, and in the case of payment to discharge the same, revoked *per se* all authority by the solicitor to receive this money except as the representative and with the consent of Mr. Campbell. If, after notice to the solicitor, requiring payment, and to Allen and the bank, forbidding reception, there appeared danger of its disregard, to Mr. Campbell and to no one else belonged the duty of application to the court to be admitted as plaintiff, instead of the bank, and for an order directing payment to himself, or for an injunction against its payment to the bank, its president or its creditors.

The Supreme Court of New Jersey, held in this very case, that Allen, having received the money in fraud of this assignment, and knowing that Tyler was its real owner, was liable *ex æquo et bono* for it, and to him—under the equitable count for money had and received. Judgment was rendered and never appealed from.

If Allen became trustee for the owner of the money by knowingly receiving it without right, it must follow that Halsey, who paid it to him, if he had knowledge of his want of right, was responsible for such payment. That he was not so responsible was because he had no notice of the right of any one but the bank of which Allen was president.

We insist that it was the duty of Mr. Campbell to secure this money—to prevent its being paid over to parties not entitled to it—who had solemnly assigned to him, as trustee for General Tyler, all right to it. Whether notice of the assignment to the solicitor would have impressed on the moneys when received by him, the character of trust funds to be held by him as trustee for Campbell or for Tyler, is, we respectfully submit, of little consequence. Such a notice would have, at least, made it the solicitor's duty to hold the money, and if he paid it over to his client, do so under the direction of the court, or after requiring or receiving indem-

nity; and so the rights of General Tyler would have been secured. If anything more than simple notice was needed to keep the money from going into wrong hands, it was the duty of Mr. Campbell to do that; and if he caused the money to be held where it was, and then took legal measures for its recovery, he would have been free from blame. Negligence in his trust would not have been chargeable to him.

But the doctrine of the learned judge, we respectfully submit, is wrong. Notice of this assignment *would* have made the solicitor trustee of the moneys when received, for Mr. Campbell. The attorney who collects moneys through a suit, becomes trustee of them for his client. And the trust can be enforced, either through summary application to the court of which he is an officer, or by bill in equity, or by action for money had and received, which is a sort of equitable action at law, lying wherever, *ex æquo et bono*, the money belongs to the plaintiff.

Now, does not a legal transfer of the right to this money by order, or mercantile draft, or assignment of the very debt sued for, make him trustee for the assignee?

True, that assignee cannot recover, if *bona fide*, and without knowledge of any rights but those of his client, he pays over to him.

But this payment, without knowledge and in good faith, is a defence to be pleaded and proved by him.

The reception of the money creates a trust for its owner. That owner, so far as he is concerned, and because of the contract of agency between him and his employer, is his client. But if the client transfer the debt to another, the trust, though unknown to him, is for that other. When he is properly informed of the transfer, then the transferee is his *cestui que trust*.

There is no difference between him and any other agent for the collection of money in this respect.

Taylor v. *Bates*, 5 *Cow.* 376, seems in point. The head-note runs thus: "T., an assignee of a demand left with an attorney for collection, assigned it to another, excepting $50, of which the attorney had notice, and then received the money. *Held*, that an action for money had and received, would lie in the name of T. against the attorney for the $50, *but no more;* and his assignee must sue for the residue."

It is noticeable that Mr. Cowen, the reporter, was counsel for the defendant.

Marvin v. *Elwood*, 11 *Paige* 375. The facts were these: Marvin, an attorney, received from Asa Farr a note against Dibble & Co., for collection. It had been originally given to the firm of Farr & Farnham, one of the partners endorsing to Asa Farr. Judgment was recovered thereon in the name of Asa Farr, as plaintiff. He assigned the judgment to Ellwood. Notice of this assignment was given to the attorney, who recognized Ellwood as its owner. One Titus, a receiver in a creditor's suit against Farr & Farnham, claimed the proceeds of the judgment as belonging to them. The bill was one of interpleader. The remarks pertinent to this case are on page 375. Said CHANCELLOR WALWORTH: "I speak of Ellwood as the client of Marvin, because the suit against the sheriff was prosecuted for his benefit, after the notice of the assignment by Asa Farr, the original plaintiff in the suit. *By that assignment, and the notice thereof which was given to the complainant, the relation of attorney and client between Marvin and Farr (plaintiff in the judgment) ceased to exist;* and the latter was not liable to the

attorney for the costs of the subsequent proceedings. The subsequent prosecution of the suit, and the receiving the money from the defendant, upon the judgment subsequently recovered, was in the character of attorney for the assignee. A different question might, perhaps, have arisen, if Asa Farr had attempted to repudiate the assignment as having been obtained by fraud, or as being invalid for any other cause. In that case, the attorney, if he had not recognized either as his client subsequently to the alleged assignment, might, perhaps, have been in a situation to file a bill of interpleader, as standing in the same privity to each; to Farr, the nominal plaintiff, by virtue of the original retainer; and to Ellwood by the alleged assignment and transfer of the subject matter of the suit. I am inclined to think, however, that in such a case, the court in which the suit was pending at the time of the alleged assignment, would have had the power to settle the matter between them, so far as was necessary to protect the attorney, by directing the money to be paid into court, and by restraining the real as well as the nominal plaintiff from molesting him on account thereof."

The principle for which we contend seems established by the decision in *Nisbet* v. *Lawson*, 1 *Kelley* 275. It is cited thus: "If an attorney collects money under the direction and name of an agent, *knowing that it belongs to the principal*, and by order of the agent pays it in discharge of the debts of the agent, such action does not relieve the attorney from liability to the principal."

It is the notice of the assignment that binds the debtor, and devolves upon him an equitable obligation in favor of the assignee. The assignment operates between the assignor and assignee only, until the act of notice takes place, which brings the debtor into the arrangement. PARKER, C. J., in *Jones* v. *Witter*, 13 *Mass.* 304-307; *Crocker* v. *Whiting*, 10 *Mass.* 316-319; *Mowry* v. *Todd*, 12 *Mass.* 281. MORTON, J., in *Parkhurst* v. *Dickerson*, 21 *Pick.* 310; *Withington* v. *Tate*, *L. R.*, 4 *Ch. App.* 288. The debtor is bound from the time of the notice, although he may not concur in the arrangement. *Bell* v. *London & N. W. R. Co.*, 15 *Beav.* 548; *Morrell* v. *Wootten*, 16 *Beav.* 197.

In this case, no notice of the mortgage was given to Theodore T. Wood, the debtor. Nor was the assignment recorded. Had it been, he would have had constructive notice, and could not have lawfully paid the bank, notwithstanding their suit.

But the solicitor prosecuting the foreclosure of the mortgage was trustee of it for the discharge of that duty, and in behalf of the bank. The assignment vested the beneficial right in that duty in Mr. Campbell for Mr. Tyler. The solicitor was a debtor to the bank. He certainly owed a specific duty to them, that is, to collect this money, and pay *them*. But the bank assigned their right to Mr. Campbell. It was *his* duty to *his* beneficiary to complete the effect of the assignment by giving notices. The duty of paying *him* could not devolve on the solicitor till he had notice of the assignment Mr. Campbell was neligent.

Mr. Campbell should have notified Wood, the mortgagor and debtor; Halsey, the solicitor in the suit of foreclosure; Dalrymple, the master who sold the property and was to receive the money. He should have put the assignment on record, to give constructive notice as far as that extended.

If it was necessary for the security of General Tyler that he should be added as party complainant in the suit, he should have applied therefor.

If loss befell the general, through his failure in any of these duties, he must respond.

Nor, prior to this suit, did he, seemingly, wish to avoid his responsibility.

In reply to a long letter from General Tyler, reciting the facts and asking explanation, he replies under date of July 16th, 1867: "I have no intention of shrinking any responsibility which I may have incurred by my connection with these transactions."

The letter (record 95) of General Tyler and the answer (record 99) are well worthy attentive consideration.

IV.

The conduct of Mr. Campbell, as shown by the evidence, although at the risk of repetition, requires formal consideration.

He had twice been counsel for General Tyler—once as to matters in New Jersey, once as to some in California (record 60, Q. 1.)

In this matter he acted as counsel for General Tyler (record 76, Q. 111, 112,) as well as Mr. Monroe.

He was first applied to by Monroe and Allen to find some one who would loan the sum of $30,000 on a $100,000 mortgage. He draws off a statement derived from Allen, and takes it to General Tyler (record 61.)

At Tyler's suggestion a written proposition is presented by Campbell to him (record 11,) in which it is expressed that Campbell is to hold the securities.

And then, first, $25,000, then $20,000 is advanced; that is to say, bonds for $25,000 and $18,000, in all forty-three bonds for $1000 each (record 63.) This was February 13th, 1865. Mr. Carow, General Tyler's son-in-law, gave them to Mr. Campbell, who delivered them to Monroe and Allen, Tyler being present. On the 16th of February all the papers *except the two assignments* were sent to General Tyler.

Next came the $4500 check, which was given April 17th, 1865, to Mr. Campbell to be handed Monroe on his giving a note and letter, such as set forth in record, p. 6. (See record 18.)

The bonds brought - - - - - - -	$47,300
Cash, - - - - - - - - - -	4,500
	$51,800

(See record 16.) So that $51,800 went into Campbell's hands, and thence to Monroe, on the security of the mortgage in question.

The property was advertised for sale on the 5th of June thereafter.

The decree was made February 28th, 1865. The laws of New Jersey require at least two months' advertisement—and give a privilege usually claimed of one adjournment of four weeks. That three months runs from March 5th.

Mr. C. has been to Morristown—knows the situation (record 64, 65.)

Does he tell General Tyler of it? The complainant is anxious, and asks if he is going to the sale; before the day—and the adjourned

day. He receives intelligence regularly and promptly, as to what occurs.

But what Campbell attended the sale for—why he did not get the money or secure it—he does not tell.

All this time Mr. Campbell was friendly with Allen—had the highest regard for him.

He is under the impression that the money was in the master's hands, ready to be paid over. So Monroe had told him (record 66, Q. 28.)

And he writes Allen, without any consent from Tyler, August 22d, 1865, the letter "*authorizing* him to collect the money as the *president of the bank* and pay over to him *enough to satisfy the claims* he held."

Nay, this authority, not so solemnly given, he had had long before. "Some time since," he says, speaking on August 30th.

General Tyler never dreamed of this. He supposed himself secure.

A most important question in the cause is whether or not Mr. Campbell ever did give notice of the assignment of these mortgages to him to Mr. Halsey, the solicitor in the foreclosure suit.

Mr. Halsey is emphatic that he did not (record 51.) "I was informed that these mortgages were assigned to some parties in New York—either Monroe, Tyler or Campbell, I think, about a month or two months *after* I had paid out this money as I have stated, and I never knew or heard of their being assigned before that."

And what clearly makes him surer is that, had information been given him, or had he had any knowledge that these mortgages had been assigned, he "would not have paid the money, or at any rate paid so that he would have been safe." That is, he would only have used the amount in his hands in excess of the mortgage claim.

A circumstance which would have fastened on his memory any such fact as the assignment of these mortgages, is that about February, 1865, the question of using these mortgages to raise money had been discussed, and that he himself, before the board of directors, forbade that to be done (record 57.) When a proposed assignment was shown him, he was very angry—told them it never should be done, and tore it up (record 58.)

He says he first heard of the assignment from Mr. Little, (who was General Tyler's counsel to sue Allen,) and was not engaged till about September 6th, 1882 (record 58.) D. 1, record 100.

The affidavits of Tyler and Campbell, made in the Jersey case, (record 87 to 93) are perhaps the most reliable evidence. It appears by Mr. Little's letter of November 9th, 1865, (record 104) that he drew the affidavit for General Tyler and sent it to Mr. Campbell, enclosed in that letter. Tyler writes Campbell November 10th, 1865, (record 113) and returns it to him. So Mr. Campbell had full opportunity, and thoroughly examined and considered the matter. And he swears in his own (record 91) that he has read Tyler's affidavit and knows the contents, and that the matter therein set forth in relation to himself, and his action in the matters referred to, are true.

General Tyler says (record 89) that Mr. Campbell "informs this deponent that he *fully supposed said solicitor* understood and knew of the making of said assignment, and that the proceeds of the sale, to an amount sufficient to repay the loan of this deponent, were to be paid over to him,

said Campbell, for the use of this deponent." That is all. And Campbell says that this was the truth. He never could have said that he notified the solicitor himself.

On this trial Campbell says: "On two occasions I told him (the solicitor) that the mortgages were hypothecated to me. Both these occasions were prior to the sale—one the day on which the property was first advertised to be sold, and the other the day on which the property was sold, but before the sale."

And yet in the affidavit of General Tyler, which Campbell swore was true, is the following: "And this deponent further saith that said Robert B. Campbell having confidence in the honesty of said Thomas E. Allen, instead of requiring the said master to pay the proceeds of said sale into the Court of Chancery, so that this deponent or said Campbell could secure, through the order of this court, payment of said loan out of said proceeds, *permitted said master* to pay said proceeds of sale to the solicitor of the Morris Bank, *supposing said Allen would at once direct said solicitor to pay to said Campbell*, or to this deponent, the amount due to him upon said loan to said Monroe."

If he told the solicitor that the mortgages were hypothecated to him, how could it be true that he supposed said *Allen would direct* the solicitor to pay the loan to Campbell? Why would he put the case there? Why did he not say that he had told the solicitor of his rights, and that Allen nevertheless induced him to pay over?

And why, in his own affidavit, is he so silent on the point of the notice of this assignment to Mr. Halsey?

But, after all, is he excusable in this kind of notice—a half-remembered talk to the effect that the mortgages were hypothecated to him? He admits that his control would have been possible. He says he *permitted* the master to pay the solicitor, &c., trusting that Allen would prevent him from injuring Tyler.

Read, in connection with this, General Tyler's indignant letter of January, 1867 (record 95 to 99.)

"After the explosion came, when Allen showed his hand and put you at defiance with $33,000 of my money in his pocket, and when Monroe had absconded, you told me you were sure you had given Halsey, the bank solicitor, (why did you not notify the proper person, the master in chancery, who was to receive the money for the sale?) that the mortgage had been transferred to you, but on the trial Halsey swore directly that you had never given him any such notice till after he had received the money, used a part of it to pay the debts of the bank, and you in your testimony, although questioned on the point, did not deny it, and the only notice you swore to giving Halsey was the one given at Little's suggestion, and about the time the suit was commenced."

The statements thus made were not denied by Campbell. Substantially, he admits the facts stated in his reply.

The learned judge says that it is not reasonable to think that Mr. Halsey could have had interviews with him in regard to the proceeds of sale, unless Mr. Halsey was aware of the reason why defendant was inquiring about such proceeds, and as to where they were.

But Halsey knew Campbell from the beginning of 1865 (record 51) in connection with Allen and Monroe, and the bank (record 59.) He thought him somehow interested in that—and so accounted for his curiosity as to the sale; and he saw him attending at the sale because of his interest in the bank.

Tyler's affidavit, which Campbell verifies, tells the whole story very succinctly.

(Record 89.) "And this deponent saith that said Robert B. Campbell had no interest personally in the bonds and mortgages so assigned to him, but *held them merely in trust for this deponent, and to secure to this deponent the repayment of said loan*, or the fulfillment of said agreement by said James Monroe; that *when said loan was made, and the said assignments were received, this deponent instructed said Robert B. Campbell to take all necessary steps to make said assignments available to secure said loan to this deponent*, and this deponent *supposed he had notified the solicitor of said bank of said assignments.*"

(Record 90.) "And this deponent further saith that said Robert B. Campbell, having confidence in the honesty of said Thomas E. Allen, instead of requiring said master to pay the proceeds of said sale into the Court of Chancery, so that this deponent, or said Campbell, could secure through the order of this court, payment of said loan out of said proceeds, permitted said master to pay said proceeds of sale to the solicitor of the Morris County Bank, *supposing that said Allen would at once direct said solicitor to pay* to said Campbell, or to his deponent, the amount due him, &c."

Here is the trust—anxious direction to execute it, reasonable excuse for non-interference, overweening confidence by the trustee in Allen and permitting him to take the money, and consequent loss.

So far only the evidence and admissions of the defendant have been heard.

The testimony of General Tyler demands consideration.

He testifies to great anxiety about this business, expressed to Mr. Campbell after the sale (record 34, Q. 44.)

He especially mentions an interview at Red Bank, when he asked if it was possible for Allen or Monroe to get that money, and Campbell replied "it is impossible."

Mr. Campbell recollects this question as referring only to Monroe.

Mrs. Carow heard the interview. She remembers the question as referring only to Mr. Allen (record 81, .Q 1, 2.)

To whomsoever it referred, here was the expression of great anxiety—coupled with request to go and get the money.

The duty of the trustee was brought fully to his notice. This was no later than the middle of August, yet on the 22d of August he writes *Exhibit H*, and August 30th he writes *Exhibit I*. Before that Tyler had asked him to go to Morristown and get the money, and he declined, (R. 67 D. 35.)

It is impossible to resist the conviction that here was unpardonable negligence, The liability of the trustee should not be denied.

The trust as to the $4500 note, and the loss of that can be adjudicated

separately, and is too clear for denial. For the facts, recur to page 2 of this brief.

But, we respectfully submit, that it was the duty of Mr. Campbell to have stopped this money in the hands of the master. It should never have reached the solicitor, unless, on notice, he consented to hold for him. Payment to him, in the absence of notice, and agreement to such holding was payment to the assignor. Had the solicitor squandered or embezzled the money, the trustee would have been liable even though he had given him notice. For he had the power to prevent his getting it by notifying the master of his rights, and requiring him to pay it into court.

4. The loss to General Tyler will not be disputed. Through Mr. Campbell he sued Allen, the president of the Morris County Bank, and who received the money from the mortgage sale; and recovered a judgment for $22,934.26. But nothing was received. Mr. Campbell, as attorney for General Tyler, sued Monroe in New York, but without result. Allen took the benefit of the insolvent laws of New Jersey.

The complainant offers to assign to Mr. Campbell this judgment against Allen, and any other securities received.

Exhibits R, S, T, U, and *V,* (Record 95 to 100) refer to this branch of the subject.

CORTLANDT PARKER,
Of Counsel for Plaintiff, Appellant.

N	"	C. 14	Sept. 4, 1865	Allen to Campbell; statement of stock bought after Feb. 1st, 1865.
K	"	C. 6	Sept. 6, 1865	Campbell to Allen, acknowledging last, etc.
5	Def't	D. 1	Sept. 7, 1865	Campbell to Tyler, reporting retainer of N. J. counsel.
6	"	D. 1	Sept. 9, 1865	Campbell to Tyler, reporting his payment of $100 fee.
7	"	D. 2	Sept. 12, 1865	Campbell to Tyler, reporting conference with N. J. counsel.
8	"	D. 2	Sept. 14, 1865	Campbell to Tyler, notifying conference at N. Y.
33	"	D. 13	" " "	Tyler to Campbell, as to Mr. Little's visit.
34	"	D. 13	Sept. 17, 1865	Tyler to Campbell, as to Mr. Little's visit.
35	"	D. 13	" " "(?)	Tyler to Campbell, as to Mr. Little's visit.
9	"	D. 3	Sept. 21, 1865	Campbell to Tyler, as to Monroe's offer to settle.
53	"	D. 26	Sept. 26, 1865	Little to Campbell, as to Halsey, etc.
54	"	D. 27	Oct. 3, 1865	Little to Campbell, as to Halsey, etc.
Q	Compl't	C. 15	Oct. 4, 1865	Campbell to Little, as to offers of settlement.
55	Def't	D. 27	Oct. 6, 1865	Campbell to Little, as to offers of settlement.
56	"	D. 28	Oct. 21, 1865	Little to Campbell, as to offers of settlement.
57	"	D. 29	Oct. 23, 1865	Campbell to Little, as to offers of settlement.
51	"	D. 21	Oct. 24, 1865	Proceedings against Monroe.
11	"	D. 3	Oct. 26, 1865	Campbell to Tyler, as to said proceedings.
12	"	D. 4	Oct. 27, 1865	Campbell to Tyler, as to said proceedings.
58	"	D. 29	Oct. 31, 1865	Campbell to Tyler; letter of inquiry.
13	"	D. 4	Nov. 2, 1865	Campbell to Tyler; enclosing Little's about proceedings.
36	"	D. 14	Nov. 6, 1865	Tyler to Campbell as to N. J. proceedings.
14	"	D. 5	Nov. 10, 1865	Campbell to Tyler, enclosing affidavit for N. J. case.
37	"	D. 15	" " "	Tyler to Campbell, respecting same.
50	"	D. 20	Nov. 13, 1865	Tyler to Campbell, respecting same.
L	Compl't	C. 6	Nov. 20, 1865	Tyler and Campbell's affidavits in New Jersey.
15	Def't	D. 6	Nov. 25, 1865	Little to Campbell, announcing suit begun.
38	"	D. 16	Dec. 6, 1865	Tyler to Campbell, as to Little.
59	"	D. 30	Dec. 11, 1865	Tyler to Campbell, complaining and enquiring.
17	"	D. 6	" " "	Campbell to Tyler, in answer.
18	"	D. 7	Dec. 26, 1865	Campbell to Tyler, enclosing Little's Letter.
39	"	D. 16	Jan. 6, 1866	Tyler to Campbell, respecting examination.
22	"	D. 7	Mar. 8, 1866	Campbell to Tyler.
40	"	D. 16	Mar. 9, 1866	Tyler to Campbell, as to shares.
23	"	D. 8	Mar. 14, 1866	Campbell to Tyler; report of stockholders' meeting.
60	"	D. 30	April 10, 1866	Tyler to Campbell, respecting settlement.
26	"	D. 9	June 4, 1866	Tyler to Campbell, as to transferring stock.
62	"	D. 31	Sept. 1, 1866	Little to Campbell, as to trial.
27	"	D. 9	Sept. 25, 1866	Campbell to Tyler, as to trial.
61	"	D. 31	Sept. 27, 1866	Tyler to Campbell, as to evidence for trial.
63	"	D. 32	Feb. 13, 1867	Little to Campbell, as to settlement.
R	Compl't	C. 16	July, 1867	Tyler to Campbell, reviewing case and asking satisfaction.
S.	"	C. 21	July 16, 1867	Campbell to Tyler, in reply.
T	"	C. 21	June 4, 1868	Tyler to Campbell; notice of Allen's insolvent application.
U	"	C. 22	June 5, 1868	Campbell to Tyler, in reply.
V	"	C. 22	July 27, 1868	Tyler to Campbell, tendering assignment of securities.

Appendix to Complainant's Brief.

EXHIBITS IN ORDER OF DATE.

:o:

NOTE.—The paging of the Exhibits being separate for each side, they are referred to as D. 1, &c., C. 1, &c., these letters meaning Defendant and Complainant. *Sched.* refers to the *schedules* to the answers, and the paging of the case proper.

Designation.	For Whom.	Page.	Date.	Description and Remarks.
1	Def't	D. 10	Jan. 27, 1865	Monroe's proposition for loan, etc.
42	"	D. 17	" " "	Memorandum as to Morris County Bank and its situation.
2	"	D. 10	Jan. 29, 1865	Tyler to Campbell about it.
3	"	D. 10	Jan. 30, 1865	Tyler to Monroe about it.
A	Compl't	C. 1	Feb. 1, 1865	Agreement; Monroe with Tyler.
Sched. 1	Def't	28	" " "	Agreement to buy his stock, etc.; Monroe to Tyler.
43	"	D. 18	Feb. 3, 1865	Allen to Monroe; protesting against small loan.
28	"	D. 11	Feb. 8, 1865	Tyler to Campbell; agreeing to deliver $18,000 bonds.
Sched. 2	"	29	" " "	Agreement as to $20,000.
" 3	"	30	" " "	Note for $20,000.
" 4	"	30	Feb. 11, 1865	Assignment to Monroe.
" 5	"	32	" " "	Assignment; Monroe to Campbell.
B	Compl't	C. 2	" " "	Agreement between Campbell, Monroe and I. Parker.
4	Def't	30	Feb. 16, 1865	Assignment to Monroe.
5	"	32	Feb. 11, 1865	Assignment; Monroe to Campbell.
B	Compl't	C. 2	" " "	Agreement between Tyler, Monroe and Campbell.
4	Def't	D. 11	Feb. 16, 1865	Letter to Tyler from Campbell, enclosing agreements.
D	Compl't	C. 4	April 17, 1865	Letter from Tyler to Campbell as to $4,500.
C	"	C. 3	" " "	Note for $4500.
M	"	C. 13	April 21, 1865	Campbell to Allen about organizing Bank.
29	Def't	D. 11	April 24, 1865	Tyler to Monroe as to introducing, etc.
E	Compl't	C. 4	July 11, 1865	Campbell to Allen about money.
F	"	C. 4	July 12, 1865	Campbell to Allen about money.
64	Def't	D. 33	July 13, 1865	Answer to last.
30—31	"	D. 12	July 14, 1865	Monroe to Tyler and Tyler to Campbell, respecting renewal of loan.
O	Compl't	C. 14	Aug. 4, 1865	Check for $5000 by Monroe.
G	"	C. 5	" " "	Campbell to Allen as to $20,000.
44	Def't	D. 18	Aug. 11, 1865	Statement of Morris County Bank.
47	"	D. 19	Aug. 15, 1865	Proposition to sell certificate of deposit in bank.
H	Compl't	C. 5	Aug. 22, 1865	Campbell to Allen; authority, etc., to receive money.
I	"	C. 5	Aug. 30, 1865	Campbell to Allen as to payments and authority.
45	Def't	D. 19	Sept. 1, 1865	Monroe to Allen, to transfer to Tyler all his stock.
46	"	D. 19	Sept. 2, 1865	Allen to Campbell, declining.
P	Compl't	C. 14	Sept. 6, 1865	Campbell to Halsey, giving notice of assignment.
N	"	C. 14	Sept. 4, 1865	Allen to Campbell; statement of stock bought after Feb. 15th, 1865.
K	"	C. 6	Sept. 6, 1865	Campbell to Allen, acknowledging last, etc.
5	Def't	D. 1	Sept. 7, 1865	Campbell to Tyler, reporting retainer of N. J. counsel.

OFFICE SUPREME COURT U. S.
FILED
OCT 20 1882
JAMES H. McKENNEY, Clerk

THE W. S. SHARP PRINTING CO., 21 West State Street, Trenton, N. J.

UNITED STATES SUPREME COURT.

DANIEL TYLER,

Appellant,

v.

ROBERT B. CAMPBELL,

Respondent.

Brief of Appellant in reply.

The argument for the defendant in this appeal, as presented in the brief filed for him, seems to be constructed upon the scheme—first, of presenting what seems to its authors to be the law governing the case; second, of criticising the motives and conduct of General Tyler, the appellant, and thus exciting the prejudice, not to say the animosity, of the court. It is submitted that it is only with the law and the facts governing the case that this honorable court will have anything to do. And to that subject we will briefly address ourselves in reply.

These points seem to be made—

First. That the assignment for the benefit of another of a bond and mortgage, is the creation of a mere naked trust, involving no duty save the holding of the papers, unless the beneficiary give directions.

Second. That the tripartite agreement between Monroe, Tyler and the defendant (*Exhibit B*, fol. 102,) controls the assignments and regulates any duties imposed upon the defendant in accepting them.

Third. That the proper construction of that instrument was that the defendant was not required to do anything in regard to the mortgages until General Tyler should elect whether he would have the foreclosure proceed,

or have the mortgages sold at auction, and should, after such election, give a direction to the defendant which of such two courses to pursue.

Of these points in order—

I.

A mere naked trust never can arise in the case of an assignment for another's benefit of any chose in action. The nature of the thing assigned forbids this. A chose in action is only valuable as it leads to or authorizes valuable possession. If it be stock, it involves the possession of dividends. If it be a debt, it involves the possession of the money owed. A naked trust can only exist where enjoyment of the property assigned can be had while the title is held by the trustee. This is impossible in the case of a debt, or of a certificate of stock, or of a bond and mortgage. The instrument in such cases is only the evidence of the thing assigned. Its possession is not necessary. It may be deposited with another. But that gives no authority over the debt. The assignment passes possession of the claim of debt, and, when it is for another, the assignee must immediately protect that claim and secure the debt.

The phrases "naked trustee" or "trustee of a dry legal estate," are specified cases in the law.

Hill on Trustees, p. 316, margin.

They are—

1. Trustees of a mere dry legal estate in lands, *e. g.*, an estate in A and his heirs for use of B and his heirs.

2. Trustees to preserve contingent remainders.

3. Trustees of terms of years attendant on the inheritance.

Such trustees have no duty except not to convey in disregard of the trust.

But *ex natura rei*, such a trust cannot exist as to a chose in action.

Of what good is a chose in action? Nothing—except as an assurance of the future possession of a valuable thing.

To hold this assurance for another, precludes him from the possession in which consists its value, and therefore the trustees must seek possession for him.

Cases already cited confirm this doctrine.

But the assignment itself ought to settle this. (Record, p. 27.) Monroe assigns to Campbell in ordinary form, and then declares him his attorney irrevocable, and that of the bank irrevocable, to collect the money due on the instruments assigned, and in case of payment, discharge it.

Indisputably, Campbell took this assignment for Tyler. Can he urge that this irrevocable power given him, exclusive of all the world, and coupled with a legal interest, involved no duty?

II.

Nor did the tripartite agreement (Record, p. 4.) restrict or alter the duties of the defendant.

The mortgages were then in process of foreclosure. They were assigned collaterally, as it were, by way of pledge. The "absolute title," so reads the paper, to the said two mortgages and lease was to be assigned to Campbell

on or before March 10th next after the date. If it was not, the moneys payable by the two agreements, and Allen's and Monroe's note for $20,000, were to become due, at Tyler's option, immediately. And in case of any default in payment of the note, or of the money to be paid under the terms of the agreement of February 1st, or in default of the performance of any of the terms and conditions in any of said two agreements contained, Tyler was to have the right to direct and compel Campbell to proceed with the foreclosure and sale with the greatest speed and promptness allowable by law, or, if he saw fit, to direct and compel Campbell to sell the two mortgages and lease at auction on fifteen days' notice to Monroe, &c.

Now here are two privileges—one of directing speedy procedure in foreclosure, a right which belonged to him without any special contract, arising out of the mere fact of the trusteeship; the other, a right which did need special contract, and the assent, solemnly, of all parties.

It is submitted that the first apparent privilege was no privilege at all in the sense of being conferred by the instrument. It existed, necessarily, as a consequence of the relation created by the assignment and the acceptance of it. It was neither its intention or its effect to restrict or restrain the rights conferred by this relation. Had that been the intent, words would have been used of a negative character, declaring that Tyler should have no right to compel the proceeding with the foreclosure, &c., till the default, &c. Such a limitation on his rights would never have been consented to by Gen. Tyler. And the mere declaration of one acknowledged right, cannot have the effect of abrogating others.

And it is perfectly consistent with the power of Tyler to *compel* proceeding with the foreclosure, that Campbell should lie under the obligation to notify the master of that suit, the solicitor therein, that his client was changed—that Tyler and not the bank was now the owner of that mortgage, at least till $50,000 was paid out of it. Had he done this, no loss could have happened. And it was not only perfectly consistent with this alleged reserved power that Campbell, if he allowed the suit to proceed, should take care that the money was not lost, but that when it was made by sale, it should go to himself under the trust created by the assignment.

Can it be true that after receiving this assignment for the benefit of Tyler, Campbell, who alone, certainly, had any legal right in the premises, could lawfully see the money raised—the mortgage extinguished—and the proceeds of the sale diverted into the hands of third persons, or those of the bank, from whom he knew it to be irrevocable? This diversion he knew to be possible, yet he did nothing to prevent it, not even the simple act of notifying the master and ordering it paid into court according to the command of his writ, and then obtaining an order protecting Tyler, or of even notifying the solicitor himself, to whom he knew the master, in ordinary course, would pay it.

Monroe and Allen failed to procure the absolute title to the mortgage to be assigned to Tyler. The whole debt then became due. It is passing strange that Campbell, who knew this well, did not then take means to protect Gen. Tyler.

It is respectfully insisted that the learned judge below is wrong in saying that Campbell was "not required to do anything in regard to the mortgage until Tyler should elect whether he would have the foreclosure proceed or have the mortgages sold at auction, and should, after such election, give a direction to the defendant which of such courses to pursue." This was no

or have the mortgages sold at auction, and should, after such election, give a direction to the defendant which of such two courses to pursue.

Of these points in order—

I.

A mere naked trust never can arise in the case of an assignment for another's benefit of any chose in action. The nature of the thing assigned forbids this. A chose in action is only valuable as it leads to or authorizes valuable possession. If it be stock, it involves the possession of dividends. If it be a debt, it involves the possession of the money owed. A naked trust can only exist where enjoyment of the property assigned can be had while the title is held by the trustee. This is impossible in the case of a debt, or of a certificate of stock, or of a bond and mortgage. The instrument in such cases is only the evidence of the thing assigned. Its possession is not necessary. It may be deposited with another. But that gives no authority over the debt. The assignment passes possession of the claim of debt, and, when it is for another, the assignee must immediately protect that claim and secure the debt.

The phrases "naked trustee" or "trustee of a dry legal estate," are specified cases in the law.

Hill on Trustees, p. 316, margin.

They are—

1. Trustees of a mere dry legal estate in lands, *e. g.*, an estate in A and his heirs for use of B and his heirs.

2. Trustees to preserve contingent remainders.

3. Trustees of terms of years attendant on the inheritance.

Such trustees have no duty except not to convey in disregard of the trust.

But *ex natura rei*, such a trust cannot exist as to a chose in action.

Of what good is a chose in action? Nothing—except as an assurance of the future possession of a valuable thing.

To hold this assurance for another, precludes him from the possession in which consists its value, and therefore the trustees must seek possession for him.

Cases already cited confirm this doctrine.

But the assignment itself ought to settle this. (Record, p. 27.) Monroe assigns to Campbell in ordinary form, and then declares him his attorney irrevocable, and that of the bank irrevocable, to collect the money due on the instruments assigned, and in case of payment, discharge it.

Indisputably, Campbell took this assignment for Tyler. Can he urge that this irrevocable power given him, exclusive of all the world, and coupled with a legal interest, involved no duty?

II.

Nor did the tripartite agreement (Record, p. 4.) restrict or alter the duties of the defendant.

The mortgages were then in process of foreclosure. They were assigned collaterally, as it were, by way of pledge. The "absolute title," so reads the paper, to the said two mortgages and lease was to be assigned to Campbell

on or before March 10th next after the date. If it was not, the moneys payable by the two agreements, and Allen's and Monroe's note for $20,000, were to become due, at Tyler's option, immediately. And in case of any default in payment of the note, or of the money to be paid under the terms of the agreement of February 1st, or in default of the performance of any of the terms and conditions in any of said two agreements contained, Tyler was to have the right to direct and compel Campbell to proceed with the foreclosure and sale with the greatest speed and promptness allowable by law, or, if he saw fit, to direct and compel Campbell to sell the two mortgages and lease at auction on fifteen days' notice to Monroe, &c.

Now here are two privileges—one of directing speedy procedure in foreclosure, a right which belonged to him without any special contract, arising out of the mere fact of the trusteeship; the other, a right which did need special contract, and the assent, solemnly, of all parties.

It is submitted that the first apparent privilege was no privilege at all in the sense of being conferred by the instrument. It existed, necessarily, as a consequence of the relation created by the assignment and the acceptance of it. It was neither its intention or its effect to restrict or restrain the rights conferred by this relation. Had that been the intent, words would have been used of a negative character, declaring that Tyler should have no right to compel the proceeding with the foreclosure, &c., till the default, &c. Such a limitation on his rights would never have been consented to by Gen. Tyler. And the mere declaration of one acknowledged right, cannot have the effect of abrogating others.

And it is perfectly consistent with the power of Tyler to *compel* proceeding with the foreclosure, that Campbell should lie under the obligation to notify the master of that suit, the solicitor therein, that his client was changed—that Tyler and not the bank was now the owner of that mortgage, at least till $50,000 was paid out of it. Had he done this, no loss could have happened. And it was not only perfectly consistent with this alleged reserved power that Campbell, if he allowed the suit to proceed, should take care that the money was not lost, but that when it was made by sale, it should go to himself under the trust created by the assignment.

Can it be true that after receiving this assignment for the benefit of Tyler, Campbell, who alone, certainly, had any legal right in the premises, could lawfully see the money raised—the mortgage extinguished—and the proceeds of the sale diverted into the hands of third persons, or those of the bank, from whom he knew it to be irrevocable? This diversion he knew to be possible, yet he did nothing to prevent it, not even the simple act of notifying the master and ordering it paid into court according to the command of his writ, and then obtaining an order protecting Tyler, or of even notifying the solicitor himself, to whom he knew the master, in ordinary course, would pay it.

Monroe and Allen failed to procure the absolute title to the mortgage to be assigned to Tyler. The whole debt then became due. It is passing strange that Campbell, who knew this well, did not then take means to protect Gen. Tyler.

It is respectfully insisted that the learned judge below is wrong in saying that Campbell was "not required to do anything in regard to the mortgage until Tyler should elect whether he would have the foreclosure proceed or have the mortgages sold at auction, and should, after such election, give a direction to the defendant which of such courses to pursue." This was no

case of election, nor did Tyler's rights depend or arise only on the written agreement. He had rights by general law.

It will be remembered that Tyler, as he swears, refrained from acting for himself because he thought Campbell was acting for him; Campbell so assuring him.

III.

And besides, before the 10th of March the foreclosure was at an end. The final decree was dated February 22d, 1865. (Record, p. 50.) The execution was delivered to the sheriff March 24th, 1865. (Record, p. 50.)

And the learned judge omitted to notice that the answer of the defendant, Mr. Campbell, admits the "election," if any, to have been made; for he says therein (Record, p. 16,) "and it was *contemplated and desired by all the said parties, including the plaintiff*, after the said assignments of the mortgages executed and delivered as aforesaid, that the said suit or suits should proceed in the name of the said bank and under the charge or care of its attorney, and that a decree of foreclosure and sale of the said mortgaged premises should be obtained and had, and that the said mortgaged premises should be sold under such decree of sale." And, "in accordance with such contemplation and desire * * * the said premises were afterwards sold."

The defendant nowhere puts his defence upon any such idea as that the plaintiff, Tyler, had failed to require him to proceed with the foreclosure. His assertion is, (Record, p. 17,) "he had reason to believe and did believe that the said solicitor had notice of the assignments, &c. And this defendant denies that there was any duty or obligation to the plaintiff imposed upon this defendant to give notice of such assignments to said attorney, and he denies also that it was material, necessary or important to give said attorney any such notice."

The learned judge failed further to observe that in his affidavit (Record, p. 91,) taken in connection with that of Gen. Tyler (p. 89) to which it was annexed, the defendant admitted all the instructions possibly needed. Gen. Tyler says (p. 89) that "when said loan was made and the said assignments were received, this deponent *instructed said Robert B. Campbell to take all necessary steps to make said assignments available to secure said loan to said deponent*, and this deponent supposed he had notified the solicitor of said bank of said assignments."

Mr. Campbell, says (p. 91) that "he has read the annexed affidavit of Daniel Tyler, and knows the contents thereof, and that the matters set forth in relation to this deponent, and his action in the matters referred to, are true."

Is it true, as the learned judge says, that plaintiff never made any election and "never gave any direction to the defendant to proceed with the foreclosure," until after all the money had been received by Mr. Halsey, "and paid out by him?"

IV.

The review in defendant's brief on pp. 7 to 33, under the heads IV. to XIV., of the conduct of the plaintiff as "harsh, oppressive, unfair, unjust," needs no detailed reply. This court has not time to expend on matters so entirely irrelevant.

Sufficient reply, if any is needed, is made by three exhibits in the case. *Exhibit L* (Record, pp. 87 to 92,) being the conjoined affidavits of the plaintiff and defendant used in the suit against Allen, and *Exhibit R* (Record, p. 95,) being the letter of Gen. Tyler to the defendant with *Exhibit S* (p. 99,) his reply, admissible, as a conversation between the parties would be.

Particular attention is requested to these three exhibits.

V.

It is perhaps advisable to say a word as to the letters of July 14th, 1865, mentioned in the learned judge's opinion. He says "Monroe's letter to the plaintiff of July 14th, shows that the plaintiff was informed that the bank expected to receive the money from the master, and with it pay the plaintiff, and not that either the plaintiff or the defendant should receive it directly from the master."

We respectfully ask whether this is not a mistake. The letter (*Exhibit* 31, Record, f. 110,) says "the money due on the Wood mortgage has been paid in to the master, and it is probable that he will pay it over before your claim becomes due."—To whom? is the question. Not to the bank, but to the solicitor, from whom Gen. Tyler thought Mr. Campbell would receive it. It was at this time that he was urging him to go and get the money. (Record, 34, Q. 44.) The $4500 note had not then been paid, and Gen. Tyler was anxious. On that very day, July 14th, according to his diary, he saw Campbell on the subject of getting the money. July 11th, Campbell writes Allen at Morristown that he had come there expecting to get some money. July 12th, he writes again that it is absolutely necessary he should have $50,000 to satisfy Tyler. (Record, pp. 85, 86.) Tyler never thought of the money going direct to the bank. It was to go to Campbell—then to be deposited to the credit of the Morris County Bank in the First National Bank in New York, and there kept, a check being given, dated on the day it should become payable. And the $4500 was to be paid, and the bank officers (in New York) were to secure the payment of the check.

This was his meaning—or, perhaps, he was willing to agree to a simultaneous action by which the money might be received formally by the Morris Bank, but deposited at the same time in the First National and its payment secured by them, as by a certified check or otherwise.

This arrangement was never carried out, and the rights of parties are unaffected by its contemplation.

VI.

The defendant seeks to show that Gen. Tyler refused to accept offers of settlement made in behalf of Monroe or Allen. Whether this was so, and whether or not Gen. Tyler was judicious in his action, seems utterly irrelevant. Gen. Tyler had his remedy, perhaps, against both Monroe, Allen and Campbell. He could pursue either. Had he, with Campbell's knowledge and assent, compromised with either, Campbell was still held. If responsible, failure to compromise cannot release him.

CORTLANDT PARKER,
Of Counsel for Appellant.

FILED
APR 17 1882
JAMES H. MCKENNEY, CLK.

Supreme Court.

DANIEL TYLER, *Appellant*,
vs.
ROBERT B. CAMPBELL, *Respondent*.

Brief of Respondent.

The bill of complaint, in substance, alleges the making of certain loans ($25,000 and $20,000), by complainant to James Monroe and Thomas E. Allen, then president of the Morris County Bank, in the spring of 1865; a subsequent loan, by complainant to Monroe, of $4,500; that these loans were to be and were secured by transfer of two mortgages held by the bank, upon the Hibernia Mine lands in New Jersey, which mortgages were then in process of foreclosure by the bank; that the defendant was made the assignee of these mortgages in trust for security of the loans; and that by defendant's negligence, in the discharge of the trust, the complainant lost all the sums loaned by him except the $20,000. There were various other allegations designed to heighten the responsibility of the defendant for and respecting the loans and to explain away, in consonance with the present interest of complainant, his proceedings and dealings with the debtors and to charge upon defendant all consequences and expenses thereof. And the relief prayed for was an accounting for the loss and expense and a decree against defendant for the amount of it. (Record, fol. 3 to 14.)

The answer fully and in detail met the averments of

the bill (Record, fol. 14 to 31, and annexed schedules fol. 31 to 35). It was not only sustained, in all substantial respects, by the decision of the Circuit Court, but was so well supported by the evidence, that no further reference to it is deemed necessary separately from the statement of the proven facts.

Proofs having been taken on the part of either party, the cause was heard at Circuit in the city of New York, and, in November, 1878, the decision of the Circuit Court was rendered dismissing the complaint with costs (see Decision, fol. 159 to 168; Decree, fol. 169). From this decree the complainant appeals to this Court (see fol. 170, *et seq*).

POINTS.

I.

The determination, by the Circuit Court, of what were the trust duties and responsibilities of the defendant (see fol. 160, *et seq.*), is founded upon and sustained by the testimony both documentary and parol. It is not supposed to be necessary to recapitulate the testimony in detail. But it will appear that:

(1.) The description of defendant's relations to complainant and to the transaction, as given in the bill and indeed in plaintiff's direct testimony, was essentially incorrect and misleading (and see Points, 5, 6, 7).

(2.) In truth the defendant's powers and duties were defined with precision by written instruments. The agreement between complainant and James Monroe (Ex. A, fol. 101), provided for assignment of the mortgages to complainant "or to such other person as he shall designate" "to be held as collateral security," for performance by Monroe of the terms of the agreement. The assignments annexed to the answer (Ex. 4, fol. 32, and Ex. 5, fol. 34), were

formal conditional assignments of the mortgages, which assignments were executed by the Morris County Bank to Monroe and by Monroe to the defendant. The tripartite agreement between complainant Monroe and defendant (Ex. B, fol. 102), provided that in case of default by Monroe or Allen, in re-payment of the loans to them (of $25,000 and $20,000), the complainant should have the right to "direct and compel the (defendant) to proceed with the foreclosure and sale of the mortgages," or if he, the complainant, should see fit, to direct the defendant to sell the mortgages at auction.

(3.) The construction, put upon these instruments by the learned judge at Circuit (fol. 164, 165), was that the language "of the tripartite agreement defines the nature of the trust duties imposed upon the defendant" and that he "was not required to do anything in regard to the mortgages until the plaintiff should elect whether he would have the foreclosure proceed or have the mortgages sold at auction and should after such election give a direction to the defendant which of such two courses to pursue." And this construction was undeniably correct.

(4.) Until and except as so directed by complainant, the defendant had no power to act. He was no more than a naked bailee. And so far at least as concerned the complainant and the assigned premises, he was not entitled to demand or expect compensation (see fol. 91).

II.

The character and degree of liability, contended for by the complainant and sought to be charged upon the defendant, is contrary to equity and has no foundation in authority.

(1.) A duty to act upon specific direction cannot be the foundation of a charge of default until there is such direction (McPherson *vs.* Cox, 96 U. S. Sup. Ct. Rep. 464).

(2.) "The degree of neglect to be made out for any sum not actually received, is also different and greater than for a sum in fact received." "When the trustee is made liable for more it must be, in the language of the books, in cases of very supine negligence or willful default" (Taylor *vs.* Bingham, 5 How. U. S. Rep., 275; Osgood *vs.* Franklin, 2 Johns. Ch. Rep., 27; and see opinion of Chancellor Kent in Thompson *vs.* Brown, 4 Johns. Ch. Rep., 628, 629, and opinion of L'd Hardwicke, in Knight *vs.* Earl of Plymouth, 3 Ves., 565).

(3.) It hardly need be added that the absence of any right to remuneration or provision therefor enhances the impropriety of the complainant's contention.

(4.) The theory advanced by the complainant would seem to be that, in the character of unskilled negotiator, he made a contract with the defendant, by which, without compensation or charge, so far as regarded complainant, or consideration moving from him, the defendant bound himself to act as trustee, "and relieve me from any labor in the transaction, and to do everything necessary to secure the loan," (fol. 38 and Bill). The supposed obligation was not limited to the taking of the securities. By suggestion, if not by direct assertion, the claim was sought to be extended through the entire period of credit and to the entitling of complainant to hold defendant as practical guarantor if he could allege that loss might have been averted by any extremity of labor and attention or skill.

(5.) The transaction admitted of no such interpretation,

nor would it be advanced except that the effort to fasten upon the defendant an extreme and oppressive measure of liability, required an extraordinary foundation, and the explicit denials of defendant (fol. 88), are sustained by the written testimony as well as by his clear and consistent history of the transaction (fols. 74 to 78). The first suggestion of the use of the name of defendant as assignee, or bailee, was not from complainant, but from Monroe in his original proposition. The response of complainant indicated that he expected defendant to "put the agreement in form." After inquiries from the bank solicitor, Mr. Halsey (page 76), respecting the securities, various papers were prepared, dated the 1st, 8th, and 11th of February, 1865 (Ex. "A," Schedule No. 1, Schedule No. 2, Schedule No. 3, Schedule No. 4, Schedule No. 5, Ex. "B"). Transfers of bank stock to complainant were also drawn, and all the papers, except the stock transfers and note, were submitted to complainant, and after criticism, or "some objections" by him, were copied to be executed.

(6.) The agreements (Ex. "A," or Schedule No. 2, and Schedule 1), and the note of Monroe and Allen (Schedule 3), contained no reference to defendant. The papers (Schedule 4 and Schedule 5), were the formal assignments from the bank to Monroe, and from Monroe to defendant. The tripartite agreement (Ex. "B"), was drawn under "explicit instructions" of complainant, "to carry out his own views" (fol. 77).

(7.) Although complainant, in his direct testimony, gave the impression that all these papers were retained by defendant, there is no doubt that this was not the case. "On the 16th February all the papers," except the two assignments and Ex. "B," were "sent to General Tyler with a letter," (see fol. 77),

and the paper, Ex. "B," was "also sent to complainant within a few days (fol. 78). The letter enclosing them (Ex. 4, fol. 134), was received by complainant (see his cross-examination), and establishes the accuracy of defendant's statement. And it seems that complainant not only examined and criticised all the essential papers while in preparation, but immediately took and held possession of them after execution.

(8.) The case sufficiently exhibits the true understanding and relation of the parties. Defendant was not entrusted by either party with any independent power or direction. Neither the bank nor Allen was distrusted. On the contrary Allen was a trusted officer of unexceptionable repute (see Halsey, fol. 71), and the bank was an institution, for the stock of which complainant was keenly bargaining as his usurious bonus.

(9.) Neither the correspondence nor the papers contained a word in support of the pretenses as to active duty and responsibility of defendant. And it is believed to be the sound construction of the agreement (Ex. "B"), that if, without default and direction of complaint, the moneys upon the mortgages had been received and misapplied by defendant, the complainant's remedy upon obligations of Monroe and Allen would have remained unaffected, and secure against any defense of payment or offset. It would be safe to say that in that contingency his claims and construction as to defendant would have been widely different.

III.

The disposition, made by the learned judge at circuit, of the charges of neglect (see Decision, fol. 165, *et seq.*), was also the equitable conclusion enforced by the facts.

(1.) There was no election or direction by the complainant such as was contemplated by the tripartite agreement.

(2.) At the time of the assignment of the mortgages, they were in process of foreclosure, in the New Jersey Court of Chancery, by the mortgagee, the Morris County Bank, through its solicitor Mr. Halsey. This fact was well known to the complainant (see his bill, fol. 4, and testimony, fol. 38), and a careful examination of the case leaves no room to doubt that the complainant was not dissatisfied with this machinery for realization of his money.

(3.) "The defendant is not charged with bad faith. It is alleged that he did not record the assignments of the mortgages—as they were being foreclosed, the plaintiff's rights would have been in no way more effectually secured as against anything which occurred if they had been recorded" (Decision, fol. 166).

(4.) The only other specific imputation at the trial was that the defendant failed to notify the solicitor Halsey of the assignment, and this imputation also was unfounded (see Decision, fol. 166–7, and Point 9).

IV.

In view of the many interested and exaggerated generalizations, aimed by the complainant against the defendant in his bill and testimony, and of the importance of vindi-

cation of the defendant, in point of character as well as estate, it may be permitted to add references to the record, showing the true nature and history of the transactions in question. For example, the assumption of the bill (fol. 4), that complainant was induced to rely upon the professional skill and knowledge of the defendant was contrary to fact. Complainant was himself a resident of New Jersey, which had jurisdiction of the mortgages and mortgaged premises. Defendant was not resident within, and was not and did not assume to be an attorney of, that State. Upon a previous occasion he had declined to examine, for complainant, the title to New Jersey land, upon the ground of his unfamiliarity with the laws of New Jersey (fol. 74).

V.

The claim of complainant that as an unskilled capitalist making investments with a view to safety and not to profit, he was persuaded to the loans solely by solicitation and representation of defendant, was also unfounded.

(1.) The direct testimony of complainant described the entire negotiation as verbal conversation had with defendant (Record, fols. 38, 39). All other intervention, written or verbal, was suppressed. At least, none appeared or was admitted.

(2.) The gist of complaint being not bad faith, but negligence, founded not upon improper procurement of the loans, but alleged faults respecting collection of them, this preliminary matter was not pertinent to the issue between the parties. But it seems to have been deemed important to prejudice the defendant before the Court at the outset with exaggeration of his agency.

(3.) The narrative given by defendant was sustained by documents. From Monroe and Allen, about the

25th of January, 1865, he received a request to find the loan, and statements as to what they offered (Record, fol. 74). As their offers were high, he got from them the statement of the bank matters (Ex. No. 42, fol. 140), took it to complainant, and explained how it was obtained and the terms of loan proposed, and upon complainant's apparent disinclination to entertain it, was about to withdraw the statement and the application. But complainant then said, "Let Mr. Monroe make me a written proposition." This being reported back to Monroe, he, on the 27th of January, 1865, made the written application of that date (Ex. 1, fol. 133), entitled "Proposition of James Monroe to Daniel Tyler for a loan of $30,000," and proposing to place in the hands of defendant, as collateral security, the mortgages in question, with a privilege to complainant to take a share in the mortgaged property and 300 shares of Morris County Bank stock, which stock Monroe was to buy back at $10,000 if complainant desired to sell. This proposition of Monroe was forwarded to complainant, and the indorsement upon it is in his handwriting (fol. 75), and was received by him, as upon cross-examination he reluctantly admitted (see fols. 50, 51). Complainant, by brief letter to defendant, dated the 29th of January, 1865 (Ex. 2, fol. 133), expressed the intention "to loan Mr. Monroe $25,000 of 5-20's for six months on terms varying a little from his proposition." And on the 30th of January, 1865, he addressed to Monroe his own counter-proposal (Ex. 3, fol. 134) to loan $25,000 of United States bonds as $30,000, expecting all expenses to be paid by Monroe, and any investigation of titles and preparation of agreement to be by defendant.

(4.) Among the other peculiarities of this proposal of a confiding capitalist, was the valuation put upon his

United States bonds for the purposes of the loan, at twenty per cent. premium, early in 1865, before the fall of Richmond, when it is matter of common history that they had no such market value.

(5.) Instead of accepting this counter-proposal of complainant, Monroe delivered to defendant the letter of Allen (Ex. 43, fol. 141), dated the 3d of February, 1865, refusing to pledge the securities for a loan of less than $50,000. This letter was forwarded by defendant to complainant (fol. 76), who wrote to defendant the letter (Ex. 28, fol. 134), dated 8th February, 1865, proposing (as the $20,000 addition to the loan) to let Monroe and Allen have $18,000 of bonds on their six months' note for the $20,000 secured by the mortgages, *and one hundred and fifty shares of the bank stock.* Thereupon the two propositions of complainant were accepted by Monroe and Allen by their letter to complainant, dated the 8th of February, 1865 (see fols. 18, 76).

(6.) This exhibits the entire negotiation, so far as known to defendant, who made no representations (see fol. 88), and whose intervention was practically limited to the introduction of the borrower and lender, and, in part, the forwarding of their correspondence. Nor did complainant satisfy himself as to the loan, without inquiry from others than defendant (see Diary, entry of 26th January, fol. 55; Letter, Ex. 2, fol. 133).

(7.) Clearly the negotiation was not by verbal conversations between complainant and defendant, beginning about 1st January, 1865, and carried on through that month into February. On the contrary, after the first and simple introduction of the subject by defendant, about the 26th of January, 1865, the negotiation proceeded, and was completed in writing directly between the principal parties; and the cor-

respondence of itself sufficed to refute the assertions of complainant in that respect.

(8.) Nor were the loans separate transactions successively induced by representation and persuasion of defendant, as charged by complainant (see Bill). It has already appeared that there was but one acceptance of both loan proposals (see fol. 18), and that this was dated 8th February, 1865. No loan was, in fact, made until the 14th of February, 1865, when the papers having been settled upon between the parties, and executed, $43,000 in bonds were delivered as the funds called for by all the preceding loan negotiations. The bonds went immediately into possession of Allen (fol. 77).

VI.

The claims of the complainant in respect of the subsequent $4,500 loan were equally, if not more grossly, unjust and unfounded.

(1.) The bill charged, that on 17th April, 1865, defendant "applied to your orator for, received, and paid over to said Monroe" "a further sum of $4,500." And in his testimony he said that the "$4,500 was subsequently advanced through Mr. Campbell."

(2.) In truth, the first knowledge defendant had of this loan was the receipt from complainant of his "check for $4,500, and a note stating that he had loaned that sum to James Monroe, and that he, Monroe, was to give complainant his note," with collateral bank stock (fol. 78).

(3.) Defendant had nothing to do with the application or negotiation for this loan, which was arranged wholly between complainant and Monroe, as appears by the memorandum (Ex. No. 41, fol. 140), which was in

the handwriting of complainant (see fol. 78). And defendant's sole connection with the making it, was to fulfill complainant's request by delivering the check in exchange for the note and collaterals.

VII.

It is thus seen that in all the business of lending the money, the portrayal of defendant by complainant was not fair or just, or in accord with the unquestionable facts.

(1.) The loans were not investments made by a timid and confiding capitalist with sole reference to safety. They were induced by hopes of great gain proffered by reason of the unusual character of the security.

(2.) Complainant was not a credulous lender blindly trusting to the judgment of another. He immediately opened direct communication in writing with the borrowers, made his own independent inquiries, and bargained sharply and keenly as to his usury or bonus and other interests.

(3.) The agreements were not mere formalities in which the mind of complainant had no part. On the contrary, they were submitted to, and scrutinized by, him. The controlling contract was prepared to meet his own personal views, and in accordance with conferences between him and Monroe.

(4.) The parties did not intrust or charge defendant with active trust powers and duties. He was not made payee in either of the evidences of debt, nor were they left in his control or possession by complainant, except that the $4,500 note remained in his safe until called for by complainant (see fol. 78).

VIII.

The conduct of defendant respecting the securities and recovery of the moneys loaned was not open to the assaults made upon it by complainant.

(1.) There was no room to question the utmost good faith of defendant. Every dollar realized by him was immediately turned over to complainant (see fol. 91). Each request of complainant received faithful and conscientious attention (see his testimony, confirmed by correspondence, fol. 124 to fol. 143). Although his service was wholly uncompensated, and without assurance of compensation (see fol. 91), it was freely rendered at complainant's request and in his interest. And "every letter that I received was sent or shown to him. Every fact that came to my knowledge was communicated to him" (see fol. 87, also confirmed by the correspondence).

(2.) After the making of the loans there were from time to time communications between the parties, and between them and defendant, respecting bank affairs and transfer of its stock to complainant, and other matters incident to the loans. The memorandum written by complainant (Ex. No. 41), contemplated re-organization of the bank for the benefit of complainant and the other stockholders. By letter to Monroe, dated 24th April, 1865, complainant proffered his aid at Washington (Ex. 29), and at the request of Allen and Monroe, defendant prepared papers for conversion into a National Bank (fol. 79, and Letter, Ex. "M," fol. 113). On 5th and 20th June, 1865, defendant was at Morristown, and on the last named day the foreclosure sale took place (see fol. 79). Defendant advised complainant by letter on each occasion. On the 11th of July, 1865, he went to Morristown, and, by complainant's request, took 450 shares of the bank stock for trans-

fer to complainant, upon his assurance that Monroe had consented to the transfer then, although not due till the 1st of August (see fol. 80, and Ex. "E"). Technical objection to the transfer was obviated (see fol. 80, Ex. "F," Ex. 64, fol. 156), and the new certificate was issued and delivered to complainant.

(3.) On the 14th of July, 1865, Monroe wrote to complainant a letter (Ex. No. 31, fol. 135), saying that it was probable the Master in Chancery would pay over the money "before your claim becomes due," and asking permission to place "the sum due you" (less $20,000 to be paid down) on deposit *to the credit of the Morris County Bank*, to be secured by post-dated check, and an agreement of the bank to keep the check good. Complainant, by letter to defendant of same date (Ex. No. 30), inclosing Monroe's letter, expressed his consent if the $4,500 note was paid, and for the purposes of the new arrangement authorized defendant to "cancel the contract and note, which I, with this, deposit in your hands."

(4.) It will be seen that the bank was satisfactory as a depositary, and also that the note and contract were until this date in possession of complainant and not of defendant.

(5.) The $20,000 note so received by defendant on the 14th of July did not fall due till the 8th of August (see Schedule No. 3). And on the 4th of August, 1865, defendant, as desired by complainant, wrote the letter (Ex. "G") demanding payment. It was in fact paid at maturity, and the money at once realized by complainant. Of the same date was Monroe's worthless check (Ex. "O") for $5,000, which defendant declined to receive as a payment (see fol. 95). Allen kept his credit good, although Monroe's responsibility had ceased to be reliable.

(6.) Monroe's $25,000 contract not having been met,

complainant on 7th August, 1865, wrote to defendant the letter (Ex. 32, fol. 135) proposing to lend the bank "$30,000 of the amount coming to me, but the transaction must be with the bank, perhaps indorsed by Allen," and "I must have under Allen's signature a statement of the bank." "It is my interest to have the bank fairly started." "*I have no objection to taking some more stock as a consideration for the loan.*" This letter being shown to Monroe and Allen, elicited from Allen the statement certified by him (Ex. 44, fol. 141), dated August 11, 1865, showing in detail the bank assets at $87,088.47, against liabilities only $22,206.75. And this statement was forwarded to complainant (fol. 81). Other propositions were also made, but resulted in no definite arrangement for extension of the loan.

(7.) Allen was regarded as a man "honorable and straightforward in all his dealings, and of large property" (see fol. 81). He was "trusted by the community," and had the confidence of the other directors (see Testimony of complainant's witness, Halsey, fol. 71). Undoubtedly there was no distrust of him by either of the parties. Although, in fact, the moneys had been obtained by him and the solicitor, in July, defendant was led to suppose that they were in the master's hands, until informed that he was ready to pay them over (see fol. 81). Defendant thereupon wrote to Allen the letter (Ex. "H") directing him "to collect the money as president of the bank, and pay over the same to me, or enough to satisfy the claim I hold." And having been requested by complainant to collect Monroe's $25,000 contract, defendant wrote to Allen the letter (Ex. "I") explaining that complainant had not acted upon the propositions for a new loan, and desired payment, and that he did not comply with his

request to go for the money in person (and see fol. 82), but he knew that he, Allen, would prefer to receive it from the master, and therefore sent him the request to collect. The letter also suggests injury "to the credit of the bank" by delay, and urges Allen to bring the money.

(8.) On 1st September, 1865, complainant and Allen met by their appointment at defendant's office, when Allen confessed that the foreclosure moneys had already (before the letter of 22d August) been "received and paid out," and this was the "first intimation" to defendant of the fact. Complainant tried to get some explanation from Allen, but obtained none except that the payment had been to "creditors of the bank," and finally complainant said that "he saw that Allen had been trying to cheat him, and asked me to look out for the best lawyer that I could find to take care of his interests and get the money back from him" (fol. 82).

(9.) From this point the intercourse between the parties and their efforts were directed to the prosecution of complainant's rights, with sole reference to his special interests as creditor and stockholder. In all which complainant was seconded by the utmost zeal of defendant, until after a lapse of years the complainant suddenly turned upon him with the surprising and oppressive claim involved in this suit.

IX.

The efforts to charge defendant with responsibility for misfortunes caused by treachery and misconduct of others was opposed to the dictates of justice and fair play, no less than to sound rules of law.

(1.) The suggestion that the assignments should have been recorded has already been remarked upon. And the stress sought to be put on the absence of record cannot proceed from any sincerity of belief that complainant's rights were in the least degree affected by it.

(2.) It was also alleged that the assignments were not brought to the knowledge of the bank solicitor who so testified. The defendant testified explicitly that on two occasions before the sale he told him (the solicitor) of the hypothecation (fols. 81, 91). In this difference between the two, the accuracy and truth of defendant's evidence was sustained by other undisputed facts. Halsey was the confidential adviser of Allen, not only as president of the bank, but individually (see Testimony and Correspondence as to suits and settlements), and he entertained a high opinion of Allen's character and trustworthiness (see his Testimony, fol. 71). An assignment to Monroe had been shown to him by Allen, and had been torn up by him in anger. But he knew that Allen was authorized by the directors to use the bank property for payment of its debts (same, fol. 73); and that "from 1862 to 1865 the project of raising money on the mortgages was discussed" (same, fol. 70), and in or about February, 1865, he learned that Allen had obtained moneys (same, fol. 71), from Monroe and complainant, with which he paid bank debts. He admitted various interviews with defendant, in one of which, in February, 1865, he made to defendant a statement, showing the bank stock to be worth thirty to forty per cent. (same, fol. 68). He exhibited precipitancy in scattering the proceeds among New Jersey creditors, paying out, as the checks indicate, nearly $20,000 in anticipation of any receipts (see same, fols. 62, 63). On the 10th of July, 1865, he obtained from the

master $50,100, as the first instalment of the proceeds. On the 11th of July, 1865, defendant was at Morristown (see Ex. "E," and Testimony, fol. 80), and had inquired of Halsey, and been told by him, "that the money could not be paid over then, and *that the matter would need an order of Court*" (fol. 81), and this was testified to by Halsey himself on the Allen trial (see fol. 91, and Halsey's reluctant admission, fol. 69). When Halsey on this 11th day of July thus represented to defendant that the money was all in the master's hands, he not only had received over $50,000 of it (see fol. 63), but he had given checks for nearly $17,000 of it in addition to his previous distribution (on the 8th and 10th of July) of about $22,000, in anticipation of receipts. Whatever our view of Halsey's effort to weaken the force of his own testimony at the Allen trial, it must be accepted as unquestionable, that on the 11th of July he suppressed from defendant the receipt and distribution of proceeds then in active progress, and desired him to suppose that the time for realization had not arrived. Clearly there was a motive for such a procedure. And no motive can well be conceived other than a determination on the part of Halsey to secure payment of other claims as against defendant. Evidently he had learned that defendant held or represented a claim upon the money.

(3.) How far infirmity of recollection was chargeable with these discrepancies it is not necessary to discuss. It suffices to say, that Halsey's differences from defendant, in recollection and statement, were not in such harmony with undoubted facts as to prejudice defendant's testimony.

(4.) There was, however, no obligation or duty imposed upon defendant to give notice of the assignments. Executed by Allen as president, they were known to him and the bank. Halsey was the attorney and

servant of the bank. He favored the application of part of the proceeds to pacify bill-holders and other unpaid original creditors of the bank, whom all parties, including complainant (as chief stockholder), were interested in having paid. And there should have been money enough remaining to satisfy complainant's claim. The source of loss was the unexpected bad faith of Allen, first in failing to pay off the bank debts from the moneys loaned by complainant, and afterward in failing to apply the proceeds to his repayment.

(5.) It was never contemplated that defendant, by supplemental bill or otherwise, should intervene as a party in the foreclosure suit, which was the only effective method of provision against misbehavior on the part of the bank. Such intervention would exhibit distrust of the bank, and prejudice the interests and purposes of the complainant in its reconstruction. And the option, specially reserved to himself by complainant in case of default, to either proceed with the foreclosure or *sell the securities*, showed conclusively that defendant was not expected of his motion, nor at his own risk and hazard, to institute any such proceeding.

(6.) Special stress was sought to be laid upon the two letters of 22d and 30th of August, as an authorization by defendant to Allen, as president, to collect the proceeds and pay over to complainant so much of them as were needed to satisfy his debt. What sincerity there could be in such a contention will appear when it is remembered that this authorization was not acted upon, and no possible injury to complainant resulted from it.

(7.) But these letters were in strict harmony with the then views of complainant, and with the circumstances of the case. The bank was believed to be in possession of resources far exceeding its liabilities,

and its stock was eagerly sought and taken by complainant, who subsequently became its president. The president, Allen, was in high repute at home in the community, and with his directors and associates. He had promptly paid the only obligation on which he was responsible to complainant. There was no apprehension of fraud or bad faith, individual or official, on his part. And defendant had abundant warrant in complainant's own letters and action for regarding both Allen and the bank as the reverse of objects of distrust or apprehension.

X.

In this connection it may be useful to consider the effort of complainant to antedate his distrust of Allen, for the purpose of casting upon defendant the burden of Allen's acts.

(1.) In proof of his expression of lack of confidence in Allen, complainant asserted that, at his house at Red Bank, he asked defendant whether it was not possible for "*Monroe* and Allen to get the money paid for the mine outside of you," and the defendant replied that it was impossible (fol. 39). And repeating the assertion as applicable to "Allen *or* Monroe," he dated it after the 26th of July (see fol. 44). His daughter, called to confirm his assertion and rebut the evidence of defendant, dated the occasion as early in August, about the 6th, when defendant called with some birth-day gifts for her children. She took pains to listen to the conversation, and said that it was "Allen" only against whom the assurance was given (fols. 99, 100). Both father and daughter spoke of non-payment of the $4,500 (called by the daughter $5,000), note as the cause of complainant's solicitude.

(2.) The testimony of defendant (fol. 89), to the effect that this inquiry and anxiety pertained solely to Monroe and not to Allen, was abundantly confirmed by the documents.

(3.) The $4,500 note, upon non-payment of which complainant and his daughter grounded the solicitude, was the note of Monroe (Ex. "C," fol. 703). Allen was not upon it, had no connection with it, and, so far as appears, no knowledge of it. It was a loan arranged directly between Monroe and complainant (see his Memo., Ex. 41), and had no relation to the mortgages, except in so far as Monroe's letter (Ex. "D"), obtained by defendant for extra precaution, might give it a lien upon any interest of Monroe in the mortgages. Non-payment of such a note discredited Monroe, but could not reasonably discredit Allen.

(4.) The letter to complainant, dated the 14th of July, 1865 (Ex. 31, fol. 135), advising him of the payment of foreclosure money to the master, and of the probability "that he will pay it over before your claim becomes due," asked leave to place it in a New York bank to the credit of the Morris County Bank, with an engagement of the latter bank to keep the deposit good. Complainant's letter to defendant of the same date (Ex. 30), inclosing this letter of Monroe, betrayed the reverse of distrust of the bank or its officers.

(5.) The letter from complainant to defendant, dated 7th August, 1865 (Ex. 32, fol. 135), brought irresistible confirmation to defendant's version of the matter. In this letter complainant suggested a loan of $30,000 to the bank, if "made safe, and the consideration attractive;" and in order to safety, "the transaction must be with the bank" (not with Monroe), "perhaps indorsed by Allen," and he required a statement under Allen's signature: it was "my

interest to have the bank fairly started," and "I have no objection to taking some more stock as consideration for the loan." In the face of this letter expressing entire willingness to lend $30,000 *to the bank*, "perhaps indorsed by *Allen*," it was not permissible for complainant to pretend that, on 7th August, 1865, when it was written, he apprehended danger from either the bank or its president, or was exacting from defendant guaranties against the dishonesty of either.

(6.) The bank, in which for bonus the complainant had acquired 550 shares or $27,500 of stock, and was willing to receive further stock as an "attractive" consideration, and whose stock had been valued by Halsey at 30 to 40 per cent., was to complainant's mind a substantial institution. Its president, whose indorsement he deemed an additional security, was not the person whom his daughter overheard complainant warning defendant against, a day or two before. And the payment at maturity on the following day, 8th August, by Allen of his $20,000 note, was not calculated to lessen him in complainant's confidence.

(7.) The truth was clearly in accord with defendant's evidence. Neither he nor complainant doubted the bank or its president, Allen, until 1st September, when together they were surprised to learn of his bad faith, and complainant "saw that Allen had been trying to cheat him" (see fol. 82).

XI.

The attempts of the complainant in his bill to charge defendant with the receipt by him of $5,000, not accounted for, and also with responsibility for the $4,500 loan, as lost

by his neglect, were special instances of the injustice with which complainant desired to oppress defendant.

(1.) No proof was offered of the receipt by defendant of the $5,000, or of a penny which he did not immediately pay over to complainant. The letter of complainant, dated 6th November, 1865 (Ex. 36, fol. 137), showed that he knew the truth in this respect. And if the imputation was based upon the worthless check of Monroe, which defendant declined to accept, it was no less insincere in complainant to make the imputation.

(2.) The $4,500 note was never collected, nor could it be collected by defendant. It was not part of, nor covered by, the hypothecation of the mortgages, and could not be made a charge upon the proceeds. And the claim that defendant should make good to complainant the default of Monroe upon this note was seen to be utterly shameless when was read complainant's letter of 17th September (Ex. 34, fol. 136), in the postscript of which he informed defendant that this note originated in a scheme to "purchase bonds for his (Monroe's) and my (complainant's) benefit," and to put the bank under the national law.

XII.

The assertions of complainant, that the suits against Allen and Monroe, and the dealings with them and the bank, were conducted or controlled by defendant in his own interest, and the theory that the result of them was for defendant's account, and chargeable to him in favor of complainant, were without foundation in truth or justice.

(1.) It has been seen that on 1st September, 1865, when it became known that Allen had distributed the

foreclosure proceeds, complainant requested defendant to "look out for the best lawyer" to be found "to take care of his interests." On the same day defendant procured from Monroe an order for the transfer to complainant of all his (Monroe's) stock (see Testimony, fol. 83, Ex. 85, fol. 142).

(2.) In accordance with complainant's request, defendant sought from Allen some account of the distribution of foreclosure proceeds (see Ex. "K," fol. 106, and Testimony, fol. 83). After inquiry he was recommended to Mr. Little of Morristown, "who consented to act for General Tyler," and who was put in possession of the facts (see fol. 83). By Mr. Little's advice there was sent to Halsey the formal written notice, dated 6th September, 1865 (Ex."P"), in disregard of which, as of his previous knowledge, Halsey seems to have proceeded with realization or settlement of the decree and deficiency (see his Testimony, fol. 65, *et seq*).

(3.) By letters dated 7th September, 1865 (Ex. 5), 9th September, 1865 (Ex. 6), 12th September, 1865 (Ex. 7), 14th September, 1865 (Ex. 8 and Ex. 33), the preliminaries of litigation were discussed. On the 17th of September, 1865, complainant wrote asking to be kept posted, "good or bad" (Ex. 34).

(4.) Negotiations were had with Monroe for settlement with complainant through sale of bank stock, and 21st September, 1865, were reported to complainant by letter (Ex. 9, fol. 126). By the letter (Ex. 35, fol. 135), complainant wrote defendant, suggesting whether it was not best to "*help Allen start his bank*," if he and Monroe have quarreled.

(5.) By the letter of 26th of September, 1865 (Ex. 53), Little advised that "it seems to me very plain that Allen is personally liable if we *choose* so to treat him." Complainant was in conference with Little independently of defendant, as appears by his letter

of the 2d of October, 1865 (see Ex. 48, fol. 143). The letter of Little, dated the 3d of October, 1865 (Ex. 54, fol. 150), also shows consultation with complainant, and expresses more strongly his opinion of Allen's personal liability.

(6.) By letter of 4th of October, 1865 (Ex. 2), further proposals and preliminaries were discussed. By letter of 21st October, 1865 (Ex. 56, fol. 151), Little communicated proposals of the Allens to secure payment of the entire debt (covered by the mortgage assignments), on condition that complainant "return the 450 shares" of bank stock. These proposals were submitted to complainant, who, without reference to defendant's judgment, refused to entertain them (see fol. 86). And by his direction (fol 86), defendant wrote to Little the letter dated the 23d of October (Ex. 57), conveying complainant's decision that he "wants the whole in cash," and expressing doubt whether even then "he would be willing to surrender the stock." This refusal was promptly forwarded by Little to Allen, as appears by his letter inclosed, on the 2d of November, 1865, to complainant (see Ex. 13).

(7.) It will be noticed that here was presented to complainant a distinct opportunity to secure to himself all the money for which he had any claim upon the foreclosure proceeds, provided he would surrender his stock bonus; and that of his own election, in pursuit of his own special interests, and against the advice of his counsel, he peremptorily refused the terms offered. Yet it is now pretended that the consequences of his refusal can be shifted to the shoulders of defendant.

(8.) Suits being commenced by complainant against Monroe in New York, he was informed by letter of 26th of October, 1865 (Ex. 11), that complaints would be "drawn for you to swear to." And the

complaints were verified by complainant, 1st November, 1865 (Ex. 51, and Ex. 52), and judgments were obtained in complainant's favor, one for $26,303.34, and the other for $4,701.88. The pretences put forward in the bill and testimony of complainant respecting these suits, were disproved by the record and letter. On the 27th of October, 1865, defendant also wrote to complainant the letter (Ex. 12), respecting "your suits against him" (Monroe), and communicating further propositions as to Monroe which defendant had told the latter he thought "you might be willing to agree to, although I did not profess to speak by authority."

(9.) By letters of 31st October, 1865 (Ex. 58), November 1st, 1865 (Ex. 49), and 1st and 2d November, 1865 (Ex. 13), there was further negotiation and preparation. The complainant held that "Allen has got our money, and it appears to me that he must account for it or go to prison, and he will not go to prison and disgrace to serve the Morris County Bank, of which we hold 550 shares of stock" (see Complainant's letter, 6th November, 1865, Ex. 36, fol. 137). And he urged that Little be not permitted to go to sleep, and that there was need of a "live man at Morristown to keep things moving," and that Allen "was too old and timid, and his sons are too well connected to let their father be disgraced for the Morris County Bank," of which "the Allens do not mean to lose control" (see same letter).

(10.) It will here again be noticed how untrue was the pretence that the complainant was not the real principal in the prosecution of Allen, or that his views and special interests (in the bank stock) did not control and determine all election and action in the premises. Nor will it escape attention how readily and eagerly his mind turned to the force of criminal prosecution and disgrace upon an "old and

timid" man, and "his sons," as a method of enforcing his civil rights.

(11.) In accordance with complainant's decision to accept no terms of security, short of instant cash payment, without return of his bank stock, and to pursue Allen (and not the bank) individually with all possible hostility and violence, Mr. Little prepared the affidavit of complainant (Ex. "L," fol. 106), and an accompanying affidavit of defendant (Ex. "L," fol. 111), upon which to procure Allen's arrest. The defendant's affidavit (thus drawn by Mr. Little) confirmed in general terms the correctness of the other affidavit, but proceeded with precise statement in harmony with the facts as they appear by his evidence and the correspondence. There was not then (in his mind at least) any question between him and complainant, nor was the affidavit framed or examined with reference to any such question. Complainant's right of recovery against Allen was the only subject under consideration by defendant or to which his attention was directed, as appears by Little's letter (Ex. 14), showing that the purpose of the affidavit was to charge Allen with knowledge and liability.

(11*a*.) These affidavits for use against Allen were submitted to and sharply criticised by complainant, who thought that "a much stronger bill should have been drawn" (see Ex. 37), and on 13th November he made the memorandum (see Ex. 50, fol. 143, and Testimony, fol. 85), urging stronger allegations against Allen, and urging that Monroe's $4,500 note be included. On 20th November the affidavits were verified, and on 25th November the suit of complainant against Allen was begun in New Jersey (see Ex. No. 15), and before 30th November Allen had been arrested and given bail (see Ex. 16).

(12.) The suit against Allen proceeded not in name only,

but as the suit of, and in the interest of complainant. On 11th December, 1865, complainant wrote the letter (Ex. 59), expressing resentment that the suit could not be tried before May, and apprehension that "in the meantime something may be discovered that may render a suit against the bank or some other action immediately necessary." He also betrayed discontent with Little for the exhibition of some delicacy about conference with him otherwise than through defendant, and in this letter, for the first time, he indicated a disposition to find fault with defendant, or lay the foundation for some imputation against him. The answer of defendant (Ex. 17), was a frank disavowal of any wish to control the counsel employed "at your request," or of any position in the matter other than that of "your attorney here," and it reminded complainant that it was his request to Little which caused their correspondence to pass through defendant, and that this could be changed at complainant's pleasure. Reference was also made to some request of complainant for a private interview, and it was frankly stated that Little was "your (complainant's) lawyer who is managing the suit, and I am ready to afford whatever assistance I can in it." Thereafter Little wrote "directly to complainant, and not through me, as he had often done before;" he had previously had separate interviews and correspondence with him, but "Mr. Little made his communications more exclusively to the complainant after that time" (see Testimony, fol. 87).

(13.) On the 25th of December, 1865, Little wrote for the original $25,000 contract (see Ex. 18), which was, and from the beginning had been, in complainant's possession (see, also, fol. 87). On the 6th of January, 1866, complainant wrote to defendant the letter (Ex. 39), urging defendant's memory and

knowledge as a witness for complainant, respecting admissions of Monroe as to the $4,500 note (originally negotiated between complainant and Monroe). On the 8th and 9th of March, 1866, letters passed between complainant and defendant respecting the transfer of another 100 shares of bank stock by Monroe to complainant (see Ex. 22, and Ex. 40).

(14.) On the 13th of March, 1866, defendant, in behalf of complainant, had been present at a stockholders' meeting in Morristown, at which the assets of the bank in excess of its liabilities were reported by Allen at $38,370.88, and defendant, by letter of 14th March, 1866 (Ex. 23), advised complainant of what had occurred. On the 10th of April, 1866, complainant wrote to defendant the letter (Ex. 60), desiring him to "pitch in" to Brown (one of the stockholders), with the threat of liability of the bank; and on the 4th of June the 100 shares of stock had been sent to Little, to be transferred (from Monroe) to complainant (see No. 26). By letter of the 1st of September, 1866 (Ex. 62), Little reported the issue to complainant of a new certificate for the bank stock, "which I hold subject to his order;" and he also reported that the suit against Allen would be on for trial in October. By letter of 24th September, 1866 (Ex. 27), Little asked for counsel to assist him, and for the original papers. The $25,000 contract was still in complainant's possession (see Letter of 25th September, Ex. 27). By letter of complainant, dated the 27th of September, 1866 (Ex. 61), he stated that he had seen Little, and given him the papers, and had directed him to "try the case now." The suit was brought to trial, and resulted in judgment in favor of complainant against Allen.

(15.) Throughout the proceedings, whether of compromise or litigation, it appeared by unquestionable

written evidence (for the most part either written by complainant or verified by indorsements in his handwriting) that everything done and decided was done and decided with sole reference to complainant's interests, and in obedience to his views, and under his direct and interested control. No interest of defendant was consulted or considered, and the documents establish the absolute truth of his statement, that everything done "was under special instructions from the complainant. Every letter that I received was sent or shown to him; every fact that came to my knowledge was communicated to him; any questions to be passed upon, he decided" (see Testimony, fol. 87). Moreover, a simple glance at complainant's letters, criticising even the law papers of his New Jersey counsel, and questioning his judgment in matters of detail as well as of substance, sufficed to test the truth of the new character assumed by him, of a confiding and unsuspecting bargainer, exercising no judgment of his own as to his loans and contracts.

XIII.

After the recovery of judgment against Allen, new efforts of compromise were made by him, and by Halsey in his behalf, and upon them, also, all action was by complainant in accord with his own views, and with sole reference to his own various interests.

(1.) Halsey "made repeated propositions; none of them were accepted." One proposition was to pay $10,000 in money, "200 shares in coal stock, and for him to keep his bank stock." "Another proposition, just after judgment was obtained, was for $15,000 in money" (see Halsey's Testimony, fol. 70). By letter dated 13th February, 1867 (Ex. 63),

Little reported the efforts of Halsey, and his response, that he "would receive the amount due, and had no other proposition to offer." The letter also showed that Halsey, estimating the bank stock at thirty per cent., and proposing the retention of it by complainant, as a part of a compromise, was met with the answer, that "we hold it (the stock) now," in addition to a claim against the bank for the debt. This letter was responded to by complainant, with "written instructions," which were forwarded to Little (fol. 88). The instructions were not produced, but Halsey's offers were rejected by complainant. Little was the faithful representative of complainant, in fact as well as of record.

(2.) Complainant having, of his own uncontrolled election, and with reference solely to his own personal interests in the bank as well as in the debt, pursued Allen to the utmost extremity, and rejected one offer of compromise after another, made after as well as before judgment, Allen finally abandoned effort in that direction, and resorted to the New Jersey insolvent laws. Thereupon complainant made a sudden and violent attack upon defendant, who, with the utmost good faith and sincerity, and without reward of any kind, had rendered patient service to complainant throughout the proceedings. This attack was by a long and unjust letter (Ex. "R"), dated in July, 1867, in which, by violent and groundless assertion, and by adoption of the arguments before the jury of Allen's counsel against himself (complainant), and other special pleading, he attempted to justify himself in asserting liability of defendant. Although complainant was a witness in his own behalf, his counsel proposed to have this letter incorporated in the evidence. The objections to its admissibility (fol. 97) were valid. There was no just reason for the introduction of such a mixture

of unsworn *ex parte* statement and special pleading made out of Court by one of the parties (or his counsel). Certainly the simple, quiet, and decorous answer of defendant (Ex. "S") was not an admission of the truth or justice of the letter.

(3.) The ingenious proposal of complainant in the following year, June 4, 1868 (Ex. "T"), to abandon to defendant the wreck of the suits, was properly answered by defendant's letter (Ex. "W"). And this was followed by what was intended for use in this cause as a tender of judgment and securities (apparently not the bank stock), upon payment of all the moneys, including the $4,500 note, as to which there was no pretence for any demand (see Ex. "V") If of any consequence whatever, the tender was fatally defective in the unjust excess of its demand and deficiency of things tendered.

XIV.

The complainant established no legal or equitable right of recovery. His claims were of a peculiarly harsh and oppressive character. They had no support in truth or justice. And the bill of complaint was properly dismissed by the Circuit Court.

(1.) From examination and analysis, especially of the written record, it has been shown how opposed to the facts of the case were complainant's characterization of the relations of the parties to each other; his description of the relative parts taken by himself and defendant in negotiation of the loans; his statement of the loan transactions themselves; his imputation to defendant of extraordinary undertakings and responsibilities; his attempt to charge upon defendant the obtaining of a loan (for $4,500), the ne-

gotiation of which was not even known to defendant until he received from complainant the written memorandum of its terms; his flattering portrayal of himself as a capitalist confiding in agents and seeking only safety of investment, instead of an exacting and eager trader for usurious gains; his assaults upon the conduct of defendant respecting the securities and recovery of the moneys loaned; his effort to transfer to defendant liability for misfortune due to misconduct of others; his antedating of distrust of the real author of his loss with a view to transfer of the loss to defendant; his pretence, not even attempted to be proven, and known to be untrue, that defendant had failed to account for and pay over every farthing received by him; his assertion that the suits against the wrong-doers were conducted and controlled by defendant and in his own interest, instead of by complainant and with sole reference to his interest; and his theory that he can rightfully prosecute defendant, as practical guarantor, by proffering to him the wreck of litigations, in the conduct of which opportunities to recover or secure the only unpaid debt applicable to the mortgages, were summarily rejected by the determination of complainant to add the loan of his own making, and to keep his usurious profits.

(2.) All action of defendant throughout the transactions was in the line of evident and simple good faith, untarnished by the least shade of self-seeking or impropriety on his part. In deference to the wishes of complainant, as communicated to him from time to time, he rendered him faithful service, in securing to him his stock interests, communicating with the president and solicitor of the bank, and rendering unpretentious aid to his purposes. He did not institute proceedings to displace the bank and its solicitor from the foreclosure proceedings. The con-

tract gave him no power, as well as charged him with no duty, to initiate such proceeding, which could not be otherwise than injurious to the bank and to complainant's interest in it. And so far from requiring or requesting that line of conduct, it is evident from complainant's letters and action, that injury to the bank or distrust of its president was opposed to his then views, and would have been reprehended by him. That Allen was unfaithful to the arrangement; that the borrowed money had not been fully applied to the relief of the bank as was designed; and that the proceeds of foreclosure were demanded by billholders and other claimants, whom the solicitor was resolved to protect in preference to complainant, and were (to the extent of the $25,000) diverted from the loan; all these facts were first made known to defendant at the same time as to complainant, and were equal surprises to each.

(3.) The right of complainant to hold Allen liable for the diversion was established by the judgment against him. His right to have held the bank liable was sustained by the opinion of his New Jersey counsel. His election to pursue the liability of Allen was determined by his interest in the bank. If it be contended that the loss from Allen's misconduct has fallen upon complainant and not upon defendant, it is evident also that all gain would have accrued to complainant. If Allen had justified the confidence reposed in him by the entire community, as well as by both parties to this suit, the expectation of complainant, that he would own a large amount of valuable bank stock, would have been realized. As usurious bonus it would certainly have been cheaply acquired. He never indicated any desire to share it with defendant, not even when he proposed to tender to him the remains of his law suits. On the contrary, he never paid or acknowledged liabil-

ity for even compensation to defendant for the service he claimed to have been due from him. The pretext that, by the agreement between the parties, defendant was to look to the borrowers for compensation was not well founded. There was no warrant in the agreements, to which the borrowers were a party, for any of the extraordinary duties and services upon the assertion of which complainant founded his demand. The borrowers could not be asked to pay for them. By complainant's account they were verbal undertakings between himself and defendant outside of the contracts. And by the same account it was clear that there was no support for them in any consideration moving to defendant from any quarter.

It is confidently believed that a careful review of the case will sustain the propositions here presented, and that the defendant was entitled to the judgment rendered in his favor by the Circuit Court, and that the judgment ought to be affirmed.

CHARLES B. MOORE,
CLIFFORD A. HAND,
Of Counsel for Respdt.